


Vault
19/20

CA2ALZ 1
56P01
c-3

CA2 ALZ 1 1956P01
Report of the Alberta Royal Commission A
ppointed Under the Public Inquirie 3

3 3398 00145 8354

Alberta
Provincial Library

REPORT

of

THE ROYAL COMMISSION appointed under The Public Inquiries Act Chapter 139, Revised Statutes of Alberta, 1942

-
- | | | | |
|--|---|---|--------------|
| The Honourable Mr. JUSTICE H. J. MACDONALD | - | - | Chairman |
| Dr. JOHN D. DOWER, M.B.E. | - | - | Commissioner |
| Dr. G. HARRISON VILLET | - | - | Commissioner |
| MAURICE L. BROWN Esq. | - | - | Commissioner |
| JOHN H. GALBRAITH Esq. | - | - | Commissioner |
-

EDMONTON, ALBERTA,
June 6th, 1956



c.3.

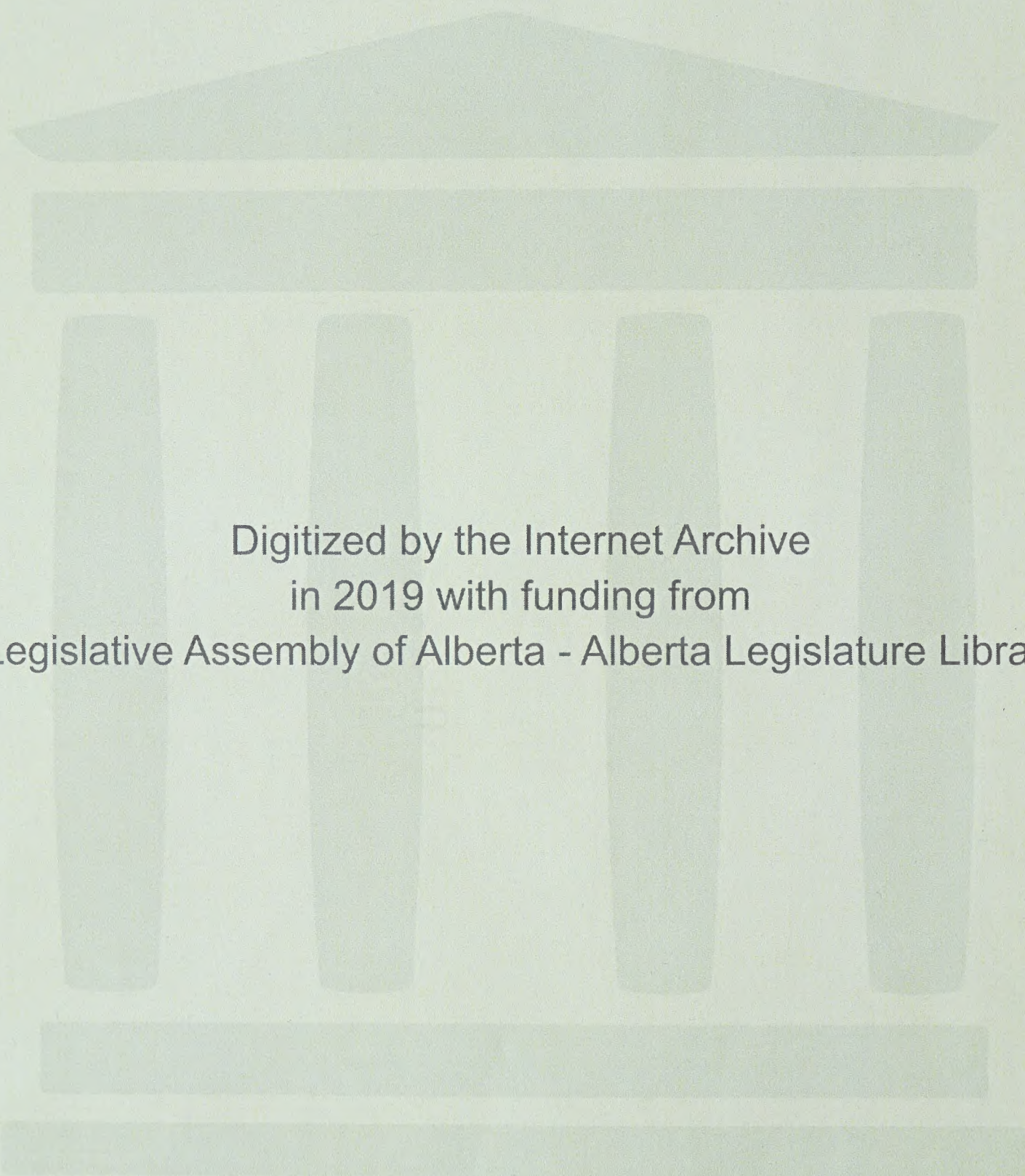
R E P O R T

of

THE ROYAL COMMISSION
appointed under The Public Inquiries Act
Chapter 139, Revised Statutes of Alberta 1942

The Honourable Mr. Justice H. J. Macdonald.....Chairman.
Dr. John D. Dower, M.B.E.Commissioner.
Dr. G. Harrison Villett.....Commissioner.
Maurice L. Brown, Esq.Commissioner.
John H. Galbraith, Esq.Commissioner.

Edmonton, Alberta,
June 6th, 1956.



Digitized by the Internet Archive
in 2019 with funding from
Legislative Assembly of Alberta - Alberta Legislature Library

REPORT

of

THE ROYAL COMMISSION

Appointed under The Public Inquiries Act

Chapter 139, Revised Statutes of Alberta 1942

PART I - THE ROYAL COMMISSION

The Honourable Mr. Justice H. J. Macdonald - Chairman

PART II - THE ROYAL COMMISSION

James C. Mahaffy, Esq., Q. C., - Chairman

Dr. John D. Dower, M.B.E.,.....Commissioner.

Dr. G. Harrison Villett,.....Commissioner.

Maurice L. Brown, Esq.,.....Commissioner.

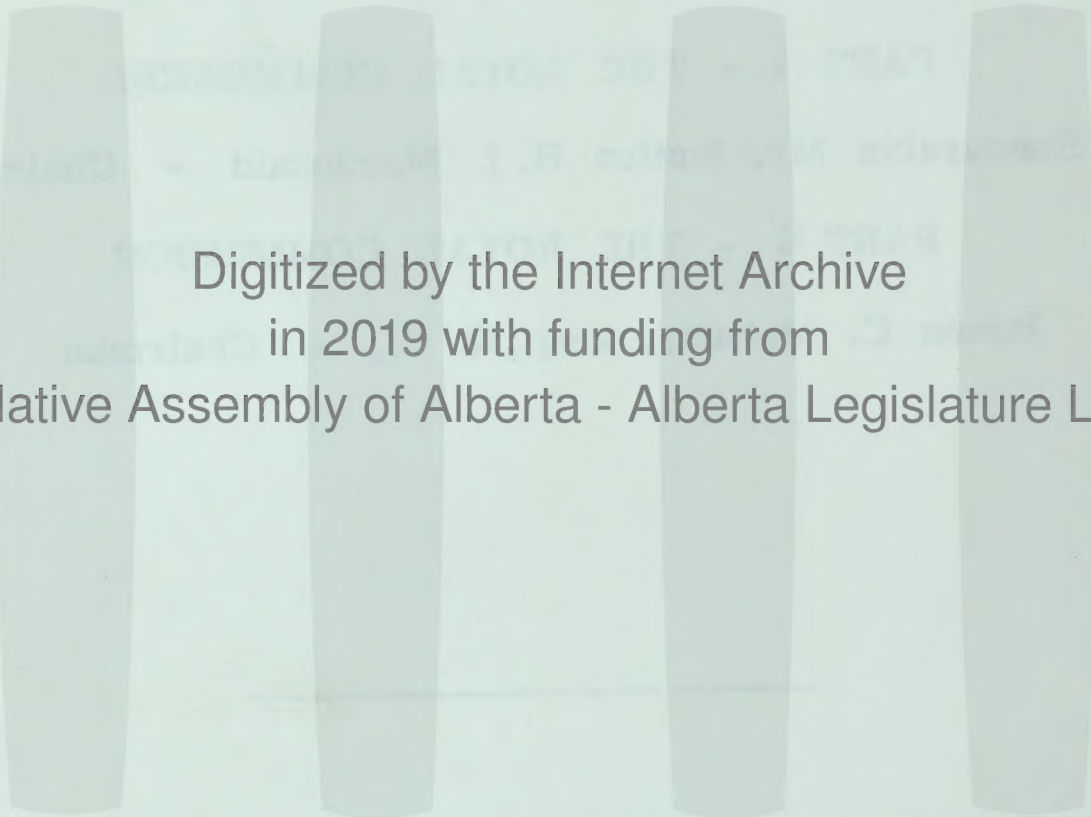
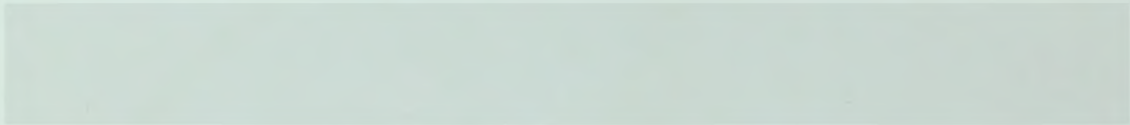
John H. Galbraith, Esq.,.....Commissioner.

Edmonton, Alberta,
June 1st, 1956.

THE ROYAL COMMISSION

REPORT ON THE PUBLIC ACCOUNTS

FOR THE YEAR 1911



Digitized by the Internet Archive
in 2019 with funding from

Legislative Assembly of Alberta - Alberta Legislature Library

REPORT
OF
PART 1

THE ROYAL COMMISSION
appointed under The Public Inquiries Act,
Chapter 247, Revised Statutes of Alberta 1942

On the 2nd day of September, 1943, at Edmonton,
Alberta, a Royal Commission was issued, the terms of which
are as follows:

* WHEREAS certain charges, allegations and
reports relating to the conduct of the business
of government in the Province of Alberta have
been made in speeches, articles and editorials
published in newspapers and magazines in the
Province of Alberta and have been made in reports
of meetings, statements and addresses published
in newspapers circulating in the Province of
Alberta and in radio and television in
various parts of the Province;

R E P O R T

of

THE ROYAL COMMISSION

The Honourable Mr. Justice H. J. Macdonald - Chairman

public interest and on authority be made under the
provisions of the Public Inquiries Act, being
chapter 247 of the Revised Statutes of Alberta,
1942, in order to investigate the said charges,
allegations and reports as contained in the said
speeches, articles, editorials, newspaper reports
and radio and television broadcasts and to report
thereon to the Lieutenant Governor in Council
and

it is deemed expedient that a
Commission be appointed consisting of the Honourable Mr. Justice
H. J. Macdonald, a Justice of the Supreme
Court of Alberta Trial Division, Edmonton, John
W. G. Macdonald, of the City of Edmonton, in the Province
of Alberta, Mr. George Harrison Villate, of the
City of Edmonton, in the Province of Alberta,
Walter Brown, of the City of Calgary, in the
Province of Alberta, and J. W. Galbraith, of the
City of Calgary, in the Province of Alberta,
and that the said Commission do
conduct the said investigation and report thereon
in the interest of public concern;

R E P O R T

of

THE ROYAL COMMISSION appointed under The Public Inquiries Act Chapter 139, Revised Statutes of Alberta 1942

On the 2nd day of September, 1955, at Edmonton, Alberta, a Royal Commission was issued, the terms of which are as follows:

" WHEREAS certain charges, allegations and reports relating to the conduct of the business of government in the Province of Alberta have been made in speeches, articles and editorials published in newspapers circulating in the Province of Alberta and have been made in reports of meetings, statements and addresses published in newspapers circulating in the Province of Alberta and also on the radio and television in various parts of the Province of Alberta; and

WHEREAS it is deemed expedient and in the public interest that an inquiry be made under the provisions of The Public Inquiries Act, being chapter 139 of the Revised Statutes of Alberta, 1942, in order to investigate the said charges, allegations and reports as contained in the said speeches, articles, editorials, newspaper reports and radio and television broadcasts and to report thereon to the Lieutenant Governor in Council; and

WHEREAS it is deemed expedient that a Commission issue to the Honourable Mr. Justice Hugh John Macdonald, a Justice of the Supreme Court of Alberta Trial Division, Chairman, John Dower, of the City of Edmonton, in the Province of Alberta, Dr. George Harrison Villett, of the City of Edmonton, in the Province of Alberta, Maurice Brown, of the City of Calgary, in the Province of Alberta, and J. H. Galbraith, of the Town of Ponoka, in the Province of Alberta, appointing them as Commissioners to conduct the said inquiry, and that the said Commission do declare the said charges, allegations and reports to be matters of public concern;

" NOW KNOW YE that by and with the advice of Our Lieutenant Governor in Council, We do by these Presents nominate, constitute and appoint, pursuant to the provisions of The Public Inquiries Act, being chapter 139 of the Revised Statutes of Alberta, 1942, the Honourable Mr. Justice Hugh John Macdonald, (Chairman), John Dower, Dr. George Harrison Villett, Maurice Brown, and J. H. Galbraith, as Commissioners to conduct the said inquiry

- (a) to investigate and report upon the facts concerning the method of calling for tenders and awarding of building construction contracts by the Department of Public Works, and in particular as to whether
 - (1) the Department was justified in specifying the use of precast concrete, Ytong or cellular blocks in those cases where the use of such products was specified;
 - (2) in connection with such contracts the Department showed any preference for any materials by reason of the fact that a former Cabinet Minister or his relatives had a financial interest in the company which manufactured such materials;
- (b) to investigate and report upon the facts concerning methods used by the Department of Public Works in the buying, selling, leasing or otherwise dealing in real property and in particular to investigate and report upon the facts
 - (i) concerning the purchase, sale or leasing, or
 - (ii) whether any Cabinet Minister or Member of the Civil Service made any personal gain from the purchase, sale or leasing of the following properties;

- "
- (1) Provincial Building, No. 2,
Edmonton
 - (2) Alberta Block, Jasper Avenue
West, Edmonton
 - (3) Seventeenth Avenue West Liquor
Store, Calgary
 - (4) Ninth Avenue West Liquor Store,
Calgary
 - (5) Proposed gaol site near Chester-
mere Lake
 - (6) Spy Hill gaol site near Calgary;
- (c) to investigate and report upon the facts concerning the method of calling for tenders and awarding of highway construction contracts by the Department of Highways; and in particular to investigate and report upon whether in any instance any preference has been shown in the awarding of highway construction contracts to persons, firms or corporations by reason of their being indebted to a Provincial Treasury Branch, or to persons, firms or corporations by reason of the fact that they assumed responsibility for the liabilities of persons, firms or corporations indebted to a Provincial Treasury Branch;
- (d) to investigate and report upon the facts concerning the building of a paved road by the Department of Highways from Highway 15 to the Belmont Rehabilitation Centre and the facts concerning the building and paving of a road from the Rehabilitation Centre to the Belmont Drive-In Theatre;
- (e) to investigate and report upon the facts concerning the method of exchanging mineral rights owned by the Crown for mineral rights owned by others as authorized under the provisions of section 19, paragraph (a) of The Mines and Minerals Act, being chapter 66 of the Statutes of Alberta, 1949; and in particular to investigate and report upon

" the facts concerning the exchange of certain mineral rights between the Honourable E. C. Manning and the Crown in the right of the Province of Alberta as evidenced by Order in Council numbered O/C 1707/51 dated November 28th, 1951, and published in the Alberta Gazette on the 15th day of December, 1951;

- (f) to investigate and report on the facts concerning the general procedure followed by the Treasury Branches with respect to making loans and in particular the making of loans by the Treasury Branches to Members of the Legislative Assembly and whether any loss was sustained by the Treasury Branches by reason of such loans; provided that in the public interest and to protect the interest of customers of the Treasury Branches no investigation shall be made into loans made to or other dealings with the Treasury Branches by any other person;

and to report thereon to the Lieutenant Governor in Council and to make such recommendations to the Lieutenant Governor in Council as the said Commissioners may in their discretion consider proper;

AND WE DO DECLARE the said charges, allegations and reports, referred to Our said Commissioners, to be matters of public concern;

AND WE DO CONFER under authority of the Act aforesaid upon Our said Commissioners, the Honourable Mr. Justice Hugh John Macdonald, John Dower, Dr. George Harrison Villett, Maurice Brown and J. H. Galbraith, the power of summoning witnesses before them and of requiring such witnesses to give evidence on oath, orally or in writing or on solemn affirmation (if they are persons entitled to affirm in civil matters) and to produce such documents and things as our said Commissioners may deem requisite to the full investigation of the matters into which they are appointed to inquire, and further confer upon Our said Commissioners the same power to enforce the attendance of witnesses and to compel them to give evidence as is vested in any court of record in civil cases.

" IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent, and the Great Seal of Our Province of Alberta to be hereunto affixed.

WITNESS: His Honour the Honourable JOHN JAMES BOWLEN, Lieutenant Governor of Our said Province, in Our City of Edmonton, this Second day of September, in the year of Our Lord, one thousand nine hundred and fifty-five, and in the Fourth year of Our Reign."

We, Hugh John Macdonald, one of Her Majesty's Justices of the Supreme Court of Alberta, Dr. John D. Dower, M.B.E., Dr. G. Harrison Villett, Maurice L. Brown, Esquire, and John H. Galbraith, Esquire, the said Commissioners, wish, at the very outset of our report, to call respectful attention to the first two clauses of the preamble which we are repeating:

" WHEREAS certain charges, allegations and reports relating to the conduct of the business of government in the Province of Alberta have been made in speeches, articles and editorials published in newspapers circulating in the Province of Alberta and have been made in reports of meetings, statements and addresses published in newspapers circulating in the Province of Alberta and also on the radio and television in various parts of the Province of Alberta; and

WHEREAS it is deemed expedient and in the public interest that an inquiry be made under the provisions of The Public Inquiries Act, being chapter 139 of the Revised Statutes of Alberta, 1942, in order to investigate the said charges, allegations and reports as contained in the said speeches, articles, editorials, newspaper reports and radio and television broadcasts and to report thereon to the Lieutenant Governor in Council;"

We wish to make it clear that we received no evidence as to the nature of such "charges, allegations and reports" as we were confined in the evidence that we admitted, to the actual terms of reference. We are pointing out that fact so that no misunderstanding may arise, because we make no further reference to "charges, allegations and reports" referred to in the said preamble.

1. The services of J. C. Mahaffy, Esquire, Q.C. as senior counsel, and of W. G. Morrow, Esquire, Q.C. as assistant counsel, were placed at our disposal.

We also had the assistance of W. F. Ellis, Esquire, who acted as our secretary.

2. In accordance with our appointment quoted above, and in accordance with Order in Council 1115, 1955 (1), we commenced sittings in public at the Court House, Edmonton, on the 19th day of September, A.D. 1955.

3. The first question to which we had to address ourselves was to ascertain, if possible, what counsel intended to appear before the Commission, and for whom. A register of counsel was thereupon made, which register was subject to subsequent modification as the hearing progressed.

4. S. J. Helman, Esquire, Q.C., of Calgary, registered and appeared on behalf of the various Government

Departments; J. V. H. Milvain, Esquire, Q.C. of Calgary, registered and appeared as counsel for the Alberta Liberal Association; Ronald Martland, Esquire, Q.C., of Edmonton, registered as counsel for the Honourable E. C. Manning, Premier of the Province of Alberta, with respect to that portion of the inquiry addressed to the exchange of mineral rights.

5. Owing to a back injury suffered by the Chairman the Honourable Mr. Justice Hugh John Macdonald, on October 21st, 1955, this Commission adjourned for some weeks. By reason of his continuing disability, he was forced to resign as Chairman of the Commission. However, pursuant to the provisions of Order in Council 140/56 dated Tuesday, February 7th, 1956, the said the Honourable Mr. Justice Hugh John Macdonald, Dr. John D. Dower, Dr.G. Harrison Villett, Maurice L. Brown and John H. Galbraith were authorized to report to the Lieutenant Governor in Council with respect to the matters set out in paragraphs (c) and (d) of the original Commission.

6. All told we sat for 16 days, between the 19th day of September and the 24th day of October, A.D.1955, inclusive, to hear evidence and arguments, and to inspect properties. Ten witnesses gave evidence before us, and 119 exhibits were filed.

7. Before our inquiry commenced, notices were inserted in the Edmonton Journal, the Calgary Herald, the Calgary Albertan, the Lethbridge Herald, and the Medicine Hat News, inviting all persons and organizations desirous of submitting evidence to the Commission to make their representations, or to have their counsel appear at the opening of the Commission, or at such time as the Commission should direct. A sample copy of the advertisement published was marked as Exhibit 2 (1).

8. The Commission set out six main subjects to be investigated, some of which had sub-headings. It was decided to investigate each of the main subjects separately.

9. We adopted the following procedure:

- (1) Commission Counsel J. C. Mahaffy, Q.C., to lead off with each witness;
- (2) S. J. Helman, Q.C., to cross-examine;
- (3) J. V. H. Milvain, Q.C., to cross-examine;
- (4) From time to time the above order of examination and cross-examination to be varied to meet the convenience of counsel.

10. In the course of the investigation we endeavoured to confine the examination of witnesses, cross-examination and introduction of evidence, so far as possible, to the precise terms of reference. However, we may have admitted some irrelevant material, rather than run the risk of excluding any important point or points.

11. We first considered section (c) of the Commission, which is:

"to investigate and report upon the facts concerning the method of calling for tenders and awarding of highway construction contracts by the Department of Highways; and in particular to investigate and report upon whether in any instance any preference has been shown in the awarding of highway construction contracts to persons, firms or corporations by reason of their being indebted to a Provincial Treasury Branch, or to persons, firms or corporations by reason of the fact that they assumed responsibility for the liabilities of persons, firms or corporations indebted to a Provincial Treasury Branch."

12. The Public Works Department was in charge of and administered highways prior to May 1st, 1951. The statute setting up the above Department and defining its powers and duties was "The Public Works Department Act", being Chapter 16, Revised Statutes of Alberta 1942. From and after May 1st, 1951, a new Department was set up under the authority of "The Highways Department Act", being Chapter 39, Statutes of Alberta 1951. The latter statute was proclaimed on May 1st, 1951. The new Department is called "The Highways Department".

13. The following sections of The Public Works Department Act (supra) relate to the subject under review:

"4. The Minister shall have the administration, management, and control of the Department and of the general business thereof; and shall oversee and direct the officers, clerks and servants of the Department."

(R.S.A. 1922, c. 14, s. 4).

"5. The Minister shall also have the management, charge and direction of the construction, heating, lighting, furnishing, maintenance and keeping in repair of all Government buildings."

"16. The Minister shall have power to enter into any contract with any person or corporation that may be necessary or advisable in carrying out the provisions of any Act of the Legislative Assembly; but no deeds, contracts or writings shall hereafter be deemed to be binding on the Department or held to be the acts of the Minister unless signed by him or by the Deputy Minister.

(R.S.A. 1922, c. 14, s. 16).

"17. The Minister shall invite tenders by public advertisement or by other public notice for the construction and repair of all public works except in cases where from the nature of the work it can be more expeditiously and economically executed by order or commission or by or under the direction of the officers of the Department.

(R.S.A. 1922, c. 14, s. 17).

"18.-(1) The Minister, when any public work is being carried out by contract shall, and in other cases may, require that security be given to His Majesty for the due performance of the work within the amount and time specified for its completion.

(2) In all cases where it seems to the Minister not to be expedient to let such work to the lowest bidder it shall be his duty to report the same and obtain the authority of the Lieutenant Governor in Council previous to rejecting the lowest tender.

(3) No sum of money shall be paid to the contractor nor shall any work be commenced on any contract until the contract has been signed by all the parties named therein nor until the required security, if any, has been given.

(R.S.A. 1922, c. 14, s. 18)."

By Chapter 23, Statutes of Alberta 1945, section 17 (supra) was amended by adding after the word "Minister" the words "when he deems it expedient", the section then reading:

"17. The Minister, when he deems it expedient, shall invite tenders by public advertisement or by other public notice for the construction and repair of all public works except in cases where from the nature of the work it can be more expeditiously and economically executed by order or commission or by or under the direction of the officers of the Department."

14. Under The Highways Department Act, being Chapter 39, Statutes of Alberta 1951, which has been in force since May 1st, 1951, the appropriate sections are:

"13.-(1) The Minister may enter into any contract with any person or corporation that may be necessary or advisable in carrying out the provisions of this Act or any other Act.

(2) No deed, contract or writing shall be deemed to be binding on the Department or held to be the act of the Minister unless signed by him or the Deputy Minister.

"14.-(1) Where it appears practical or expedient to do so, the Minister shall invite tenders by public advertisement, or by other public notice for the construction and repair of all highways.

(2) In any case where, in the opinion of the Minister, it is not expedient to give the work to the lowest bidder, the Minister shall report the same to and obtain the authority of the Lieutenant Governor in Council prior to rejecting the lowest tender.

" (3) The construction and repair of highways may be undertaken by or under the direction of officers of the Department, or by order or commission in any case where the Minister is of the opinion that from the nature of the work it can be more expeditiously and economically executed in that manner, or it is desirable or expedient to do so.

"15.-(1) When work on any highway is being carried out by contract the Minister shall, and in other cases the Minister may, require that security be given to His Majesty for the due performance of the work within the amount and time specified for its completion.

(2) No sum of money shall be paid to the contractor nor shall any work be commenced on any contract until the contract has been signed by all the parties named therein nor until the required security, if any, has been given."

15. The first witness heard was Alexander Frame, Deputy Minister of Highways. We find Mr. Frame to be a credible witness and we accept his evidence.

Mr. Frame entered the employment of the Alberta Government in 1922 and has held the positions of Resident Engineer, Highway Commissioner and Deputy Minister. He became Deputy Minister of Highways in 1951 when the statute, The Highways Department Act (supra), set up a new and separate Department of Highways.

The witness outlined the statutory provisions that have been in force in Alberta since 1942 respecting highways.

16. Mr. Frame testified that the main branches under his Department are the following: Main Highway Construction,

Maintenance, Surveys, Bridges, and Highway Traffic Board. He stated that of these the three most important branches are Highway Construction, Bridges and Maintenance.

17. Mr. Frame stated that at the present time the Highway Construction Branch is under the charge of Mr. Allen M. Paull; the Bridges Branch is under Mr. Leslie H. McManus; and the Maintenance Branch is under Mr. James H. Johnston.

18. Mr. Frame testified as to the procedure adopted and followed by his Department with respect to the calling of tenders and awarding of contracts. This evidence was all set out in a written brief or statement made by him and submitted as Exhibit 7. Two specimens of advertisements calling for tenders were also introduced. Exhibit 8 is the form of advertisement used since August, 1955 (1). Exhibit 9 sets out the form used prior to August, 1955 (2). The only significant change in the form of the two advertisements is that Exhibit 8 provides that tenders shall be opened in public and that contractors submitting bids are invited to attend.

19. Mr. Frame stated that the normal procedure is to insert the advertisements in three Alberta papers, namely, the Edmonton Journal, the Calgary Albertan and the Lethbridge

- (1) Appendix III.
- (2) Appendix IV.

Herald. Where work on the Trans-Canada Highway is involved, similar advertisements are published in papers outside of the Province. The advertisement sets out all the requirements with respect to deposit, surety bond, residence, qualifications, closing time date and the places where the tender forms may be procured. The tenders are delivered to the Deputy Minister's office in sealed envelopes and are opened in the presence of the Deputy Minister, a representative of the Provincial Auditor, the Departmental Secretary-Accountant and the Branch Head concerned. When a Trans-Canada Highway contract is concerned, the Federal Supervising Engineer is also present at the opening of the tenders. The Deputy Minister opens all envelopes, removes each tender and accompanying bid bond and reads aloud the name of each tenderer and the amount of each bid bond. This information is recorded on bid sheets by the Secretary-Accountant.

A specimen copy of a bid sheet was submitted and marked Exhibit 10.

20. Mr. Frame explained that the open tender is then handed to the Branch Head, who reads aloud the total amount of the bid, which is entered on the bid sheet. The tender and bid bond are then handed to the representative of the Audit Department, who takes off whatever information his Department requires. According to the witness, this procedure is carried out in every case. All the tenders, bid

bonds and bid sheets are then taken by the Branch Head to his office, where the Office Engineer checks all entries for mathematical errors and marks the corrections, if any, in red on the bid sheet. The bid sheet is then signed, as having been compiled in the office of the Branch Head.

21. Mr. Frame further testified that all bid bonds are then sent to the Secretary-Accountant for safe-keeping and all tenders but the lowest are retained by the Office Engineer, pending the awarding of the contract. The lowest tender is always accepted unless the circumstances are exceptional. However, there are cases where, for good reasons, all bids are rejected and new tenders called for.

22. Mr. Frame stated that the lowest tender, together with the bid sheet, is then returned to the Branch Head, who further examines the tender and bid sheet to determine that the Office Engineer's work is in order. He also examines the list of equipment furnished by the contractor, to determine whether the contractor is capable of carrying out the work. The Branch Head then signs the bid sheet and makes a notation that a 100% performance bond is required. The completed bid sheet is then returned to the Deputy Minister, who is advised of any circumstances that may affect the awarding of the contract to the lowest bidder. If there

are no such circumstances, and the Deputy Minister is satisfied that the tender is in order and that the contractor is capable of carrying out the work, the contractor's name is inserted and the bid sheet is signed by the Deputy Minister. It is then forwarded to the Minister for his stamp and initials approving the awarding of the contract.

23. Mr. Frame stated that if there are circumstances indicating that the lowest bid should not be accepted, a recommendation is made for an Order in Council rejecting the lowest tender and recommending that the contract be awarded to the next lowest bidder. The reasons for the rejection accompany the request for an Order in Council.

24. The witness also stated that after the final decision is made toward the contract, the Branch Head has three copies of the contract typed and forwarded to the successful bidder, with instructions that two copies are to be signed and returned along with a performance bond for 100% of the amount. The third copy is for the information of the bonding company.

25. Upon receipt of the two signed copies of the contract, together with a satisfactory performance bond, the contract is signed by the Minister. The original copy

and performance bond are then filed in the office of the Branch Head. The second copy is forwarded to the successful bidder and his bid bond is returned.

26. Further evidence was given by Mr. Frame to the effect that if the contractor has finished, or nearly finished his contract in the early Fall, and there is a possibility of several months' good weather still remaining, the Department may grant an extension to the existing contract to cover an additional length of road, at the same unit prices as were contained in the original contract.

27. Mr. Frame further indicated that another type of contract was sometimes used by the Government. This was known as a "negotiated contract". As a rule, it was used when the Department felt that certain work was immediately necessary and they were aware that a contractor was working on another project close by. He might be asked to submit a bid, and if his prices were acceptable, a contract was entered into with him.

28. Mr. Frame also stated that a further type of contract was sometimes entered into, known as an "invited tender contract". Ordinarily, this was where small contracts were concerned, and mainly made use of by the Maintenance Branch. In such cases, a number of the local contractors in the area were asked to submit prices, if interested. The lowest bid was normally accepted and the

contract entered into. Performance bonds and deposit requirements were generally waived.

29. Statements covering particulars of highway construction, of bridge construction and of maintenance for the years 1951 to 1955 inclusive, were presented by Mr. Frame, all of which statements were filed as exhibits (1).

30. Part of Mr. Frame's examination by Mr. Mahaffy is as follows:

"Q Now dealing with the last part of paragraph c, the Treasury branch relationship with Highways, Mr. Frame, outside of the exception which Mr. Helman has mentioned, (2) have you any knowledge of any instance of where any preference has been shown in the awarding of Highway Construction contracts to persons, firms or corporations by reason of their being indebted to the Provincial Treasury Branch?

"A I have no -- I have no instance -- I am trying to get the proper word -- I know of no instance of any correlations between the Treasury Branches and the Highways as to their awarding of contracts by the Government, except this case which Mr. Helman talks about." (2)

The witness also stated that he knew of no case where the Highways Department showed a preference to a contractor because he was indebted to the Provincial Treasury Branches.

(1) Exhibits 14 to 23 inclusive.

(2) This exception is discussed at pages 80, 81 & 82 of transcript of evidence and at pages 29, 30 & 31 of our report.

He stated further that he knew of no case where any preference was given to a contractor because he had assumed responsibility for the debt of another person to the Treasury Branches.

31. Mr. Frame stated that, except for the one case mentioned by Mr. Helman (1) he had never been requested by any Treasury Branch official to give any preferred treatment to a contractor.

We quote from the questions asked by Commission Counsel and answers given by Mr. Frame (2):

"Q Have you at any time been requested by a Treasury Branch Official to give preference to a contractor in the awarding of tenders or work?

"A Not that I know of.

"Q Now have you ever been requested by any Minister of the Crown, either directly or indirectly, to give preferred treatment to a contractor who owed money to the Treasury Branch?

"A Not to my knowledge.

"Q Have you ever been requested by any other person to give such preferred treatment?

"A I don't think so."

32. When Mr. Milvain cross-examined Mr. Frame with respect to the short period of time from the date of the

(1) This exception is discussed at pages 80, 81 & 82 of Transcript of evidence and at pages 29, 30 & 31 of our report.

(2) Commencing at page 84 of transcript of evidence.

first insertion of the advertisements calling for tenders and the date when the tenders would be opened, the witness indicated that the Highways Department had received no complaint from any contractor and that the Department usually received an adequate number of serious bids or tenders. He did admit that, in some instances, the intervening time was probably short, particularly if a weekend or holiday occurred during the course of the advertising.

33. Mr. Frame stated that he did not know why the Calgary Albertan was chosen, rather than the Calgary Herald, as the medium of advertising in the City of Calgary, nor why the Lethbridge Herald was chosen in the southern part of the Province.

34. Under cross-examination, Mr. Frame admitted that in respect to preparing specifications for the calling of tenders, his Department, while making use of the services of soil experts, had not, as yet, used chemical analyses of soils in the preparation of such specifications. He testified that, on occasion, outside consultants had been employed with respect to special problems encountered in highway construction.

35. Mr. Frame, under cross-examination, agreed that the more carefully that plans and specifications are pre-

pared, the more accurate the tender can be. He added that a lot of the location work is done during the winter months because the Department has insufficient engineers to go out in the summertime.

36. Mr. Frame further stated under cross-examination by Mr. Milvain that he had no knowledge of any instance in which the moneys, or part of the moneys, earned by any contractor were assigned to the Treasury Branches. Mr. Helman objected to the question being asked, and after considering the objection, the Commission ruled that such cross-examination was beyond the scope of the Commission.

37. The second witness called in connection with this point of reference was Allen M. Paull, who, at the time of the hearing, was Chief Construction Engineer for the Alberta Department of Highways. From 1937 to 1941, except for a period of leave of absence for war service, Mr. Paull was Office Engineer for the Department of Public Works. He later became Superintendent of Construction and in 1948 was appointed Assistant Highway Commissioner. On May 1st, 1951, he became Chief Construction Engineer, at the time the new Department of Highways was created and has held that position since. He is responsible for the construction of main and secondary highways within the Province. We find that Mr. Paull is a credible witness and we accept his evidence.

38. Mr. Paull agreed with the explanation given by Mr. Frame (1) as to the procedure followed with respect to tenders so far as his branch is concerned. He stated that he is present at the opening of tenders for highway construction.

Statements showing contracts held by contractors indebted to the Treasury Branches and showing all contracts awarded by the Department for the period 1941 to 1955 inclusive, were introduced and were filed as exhibits (2).

39. Mr. Paull was examined in detail respecting the contracts referred to in the preceding paragraph. Counsel examined and cross-examined him as to why some contracts had been extended, negotiated, or amended instead of being awarded by tender. Mr. Paull gave an explanation with respect to each contract on which he was examined.

40. A typical problem with which the Highways Branch had to deal arose in contract 631/51 (3) covering the application of a stabilized gravel base course and asphaltic plant mix to the highway between the Lethbridge Airport and Magrath. Mr. Paull explained that the original five miles of road which were to be worked on by the contractor,

(1) Supra, page 13.

(2) Exhibits 30 to 38 inclusive.

(3) Exhibit 40, Stabilized gravel base course and asphaltic plant mix surfacing Lethbridge Airport to Magrath, Willing Corner to Raymond Extension Magrath to north of Spring Coulee.

(who had been awarded the contract in the normal manner) were found to be unfit for the work to be done, due to the poor condition of the grade. The Department, therefore, decided to give the contractor an extension of the contract at the same unit prices for an equivalent mileage in the same area. The reason for this, according to Mr. Paull, was to give the contractor an equivalent mileage, or, in the words of the witness, "to offset this loss of work" (1).

41. Contract 645/51 (2), north of 16th Base Line, was considered in some detail. An extension to this contract was given to Standard Gravel and Surfacing of Canada Limited and a new haul price at a higher figure had to be negotiated after the contract had been signed. A change of conditions in the haul of gravel from the pit location to the place of work warranted an increase in the haul rates.

42. Another example of how contracts were treated by the Department was illustrated by the extension to Contract No. 649/51 (3). Due to favorable construction weather, good progress was made by the contractor, hence the original 10.36 miles contracted for were completed

- (1) Transcript of evidence, page 136.
- (2) Exhibit 43, Westlock to south of Jarvie, Extension to Contract No. 645/51. Replacement gravel surfacing.
- (3) Exhibit 45, West of Spirit River to 5 miles west. Extension to Contract No. 649/51.

early. Therefore the Department gave an extension for a further 5.04 miles on September 21st, 1951.

43. Mr. Paull then referred to the contract known as the Coleman Revision (1) which involved constructing the highway through the town proper. Mannix Company Limited had the contract for highway construction to the east and west limits of the town. The construction of that section of highway within the town limits was considered difficult, as rock blasting would be necessary. Mannix Company Limited had adequate equipment immediately adjacent to this work. Therefore, it was asked to submit unit prices for this portion of roadway. The Department, upon examining the prices submitted, considered they were fair and reasonable, bearing in mind the fact that the quantity of work was hazardous, and too small to warrant any outside contractor moving in to do the work. The contract was awarded accordingly.

44. Mr. Paull indicated that when a contract was terminated because the Department Engineers found that the roadbed was not in condition to take the surface contemplated at the time the contract was awarded, the Department, where at all possible, awarded an alternative contract, of

(1) Exhibit 46, also Exhibit 53. Addenda to Coleman Revision, Coleman Revision and extensions.

a comparable type and nature, to the same contractor. He stated that the Department, if not legally required to do so, nonetheless felt that it was morally responsible to see that the contractor, who was left in the position of having undertaken the contract at considerable expense, had some opportunity of putting his equipment to work on another project. In such cases the Department used all the information at its disposal and awarded a contract on the basis of unit prices that were either indicated in the original tender on the cancelled contract or which appeared to be fair for whatever type of new work was awarded.

An example of this type of policy is to be found in contract 635/51 (1).

45. Mr. Paull testified that, to his knowledge, no preference of any kind had ever been shown in the awarding of highway construction contracts to any person, firm or corporation by reason of the fact that such person, firm or corporation was indebted to the Treasury Branches, or had assumed the liability of some other person, firm or corporation indebted to the Treasury Branches. He also stated that he had never been requested by any official of the Treasury Branches to give any preferential treatment, nor had he been requested by any Minister of

(1) Exhibit 50, Highway No. 34, Smoky River to junction Highway No. 2 and Highway No. 2 from Berwyn to the Sixth Meridian.

the Crown, either directly or indirectly, or by any other person, so to do.

46. Mr. Paull stated in his evidence that shortly after the war, because of lack of experienced engineers and staff, and because of the tremendous backlog of roadwork, and public pressure to have it done, it was most difficult for the Department to plan and carry out the work efficiently. He indicated that the Department's technical knowledge was being continuously improved and that studies were being made of the methods used by various agencies in other provinces and in the United States.

47. Mr. Paull also stated that one of the problems shortly after the war arose from the fact that, for certain types of road surfacing, there were only about three contractors in the province who had the equipment and knowledge to do the work, and this limited the effectiveness of letting contracts by tender. It was, therefore, not surprising that the names of certain companies were repeatedly emerging as successful bidders.

48. Mr. Paull also testified that one of the difficulties his Department encountered was that it was unable to let contracts until the Legislature had voted the appropriate money. Following this, the Department had to

advertise for tenders. He indicated that to get the maximum efficiency his Department attempted to "stagger the jobs", generally having them start earlier in the southern part of the province, because the construction season is longer there, and the spring break-up probably earlier. Also, in advertising for tenders, an attempt was made to enter into contracts which could be completed in a normal construction season. He made the observation that, in general, there had not been any complaints from contractors as to the method of advertising.

49. When asked why the "Albertan" was chosen as the medium for advertising in the Calgary area, Mr. Paull replied:

"Well, ever since I have taken over it has been in the Albertan, and was for a considerable time as far as I recollect."

He stated that when new contractors came into the province they usually made enquiries of the Department as to the "qualifications required" and "how these contracts are advertised" (1). This information is given.

50. Mr. Paull stated emphatically that his Department has never "set out to negotiate contracts" (2) with a contractor because that contractor owed money to the

(1) Transcript of evidence page 255.
(2) Transcript of evidence page 256.

Treasury Branches.

In part his evidence is:

"A No, I never, speaking personally I never even considered or even taken into account, or even thought of what a contractor owed or who they owed.

"Q Have you kept any track of the Treasury Branch activities at all in the sense of knowing who owed money to them?

"A Well Mr. Helman, I have never spoken to anybody in the Treasury Branch, I don't know anybody in the Treasury Branch. I am just not interested, to me a Treasury Branch is just the same as a bank, it means nothing to me." (1)

51. Mr. Paull was examined and cross-examined at great length respecting Contract number 504/48 (2) covering the highway from Morinville to Clyde Corner. The complete departmental file was entered as an exhibit. This contract was negotiated after invitations had been sent out for bids.

The successful contractor was O'Sullivan Construction Company. Upon acceptance of the bid the Assistant Highway Commissioner, Mr. Paull, on June 30th, 1948, forwarded by letter (3) to O'Sullivan Construction Company, the usual three copies of contract and specifications for signature. He indicated in his letter that a bond of 100%

(1) Transcript of evidence page 256.

(2) Exhibit 69, Edmonton to Morinville Contract No. 459/47, O'Sullivan Construction Company; also included, Ex. 68 Contract 459/47 Stabilized gravel base course, Edmonton to Morinville; Ex. 69A Morinville to Clyde Corner, Contract No. 504/48; Exs. 76, 80, 81, Departmental Files.

(3) Exhibit 76C.

or a marked cheque equal to 20% of the amount of the contract bid would be required. This contractor executed the contract and returned the three copies duly signed, together with a "certified cheque for \$70,800.00, being bond as required" (1). The evidence disclosed that this cheque, although described as "certified" in the letter was in fact never certified.

52. On July 24th, 1948, the Deputy Minister, Mr. G. H. N. Monkman, forwarded a memorandum to Mr. Huckvale, the Provincial Auditor. This memorandum is as follows:

" This Department has recently negotiated an extension of a contract with the O'Sullivan Construction Company, for asphalt surfacing and necessary work between Morinville and Clyde corner. Mr. O'Sullivan has approached the Department in regard to deposit required on the contract.

I have discussed this matter with Mr. Woodman of the Treasury Department and Mr. Olive of the Treasury Branches, as Mr. O'Sullivan does his financing through the Treasury Branches.

When Mr. O'Sullivan's present contract is completed to Morinville he will have deposited with the Government \$25,000 and 10% retained on the present contract, which will amount to, at the end of July, approximately \$55,000.00, making a total of \$80,000 held by the Provincial Government. Mr. O'Sullivan has requested that this amount of \$80,000 be retained as deposit on his contract for the Morinville-Clyde Corner work. This arrangement is acceptable to this Department and the Treasury, and I would be pleased to have you advise me if you can agree to such an arrangement. The sum of \$80,000 will be as surety deposit of 10% of the contract between Morinville and Clyde Corner." (2)

- (1) Transcript of evidence page 268.
- (2) Exhibit 76 I.

53. The Provincial Auditor's reply dated August 13th, 1948, is as follows:

" In reply to your memorandum of the 24th ult. please be advised that inasmuch as the O'Sullivan Construction Company is heavily involved with the Treasury Branches and that any monies due by the Department are assigned to them, I cannot agree with the proposal contained therein. I would suggest that Mr. O'Sullivan be contacted and required to put up a bond independent of any funds that may be due him from the Department." (1)

On August 16th, 1948, Mr. Frame wrote to O'Sullivan Construction Company as follows:

" I am instructed to advise you that the Provincial Auditor has refused to accept the proposal submitted in connection with Bond for Contract 504/48.

It therefore, becomes necessary that you immediately provide a Bond for one hundred (100) per cent of the amount bid, or a marked cheque in the amount of twenty per cent of the amount bid as requested in my letter of July 16, 1948." (2)

On September 16th, 1948, W. H. Turton, secretary and accountant of the Department of Highways, wrote to Mr. Frame as follows:

- (1) Exhibit 76J.
- (2) Exhibit 76L.

"I am returning herewith letter addressed to you dated July 23, 1948 from the O'Sullivan Construction Company in which they state they are enclosing a certified cheque in the amount of \$70,800.00 on Contract 504/48.

The cheque in question is also attached hereto and you will note that it is not certified and therefore cannot be accepted in lieu of Indemnity Bond.

Would you please arrange to have this cheque certified and return to this office at your earliest convenience." (1)

At the foot of this memorandum appears the following notation:

"Received above cheque September 24/48."

54. Reference was made to a memorandum dated October 26th, 1948, from A. Frame, Highway Commissioner, to W. H. Turton, secretary and accountant of the Department, which reads as follows:

" Attached find Treasury Branch marked cheque, dated Lethbridge, October 13-48 in the amount of \$45,040.00 signed by Frank O'Sullivan. This cheque, together with the marked cheque in the amount of \$25,760 forwarded to you with my memorandum July 10-47 in connection with Contract 504/48, as Contract 459/47 has been completed.

Please acknowledge receipt of the above cheque for \$45,040.00 on the attached copy of this memorandum." (2)

- (1) Exhibit 76M.
- (2) Exhibit 76N.

55. Mr. Paull stated that by November 1948 O'Sullivan had completed his 1947 contract (1) and was entitled to get his deposit cheque of \$25,760.00 released. This cheque, together with the \$45,040.00 cheque signed by Frank O'Sullivan, constituted a total of 10% under the new proposed contract. On November 15th, 1948, the signed contract covering the Morinville to Clyde Corner highway was forwarded by Mr. Frame to the contractor. Prior to this date, the actual contract document had not been released by the Department at any time.

56. Evidence was given by Mr. Paull to the effect that the monthly progress estimates under the Morinville to Clyde Corner contract indicated that the contractor, who had been working on this project, notwithstanding he had no signed contract, had by November 22nd, 1948, earned an accumulative total of \$233,264.13. In other words, Mr. Paull stated that, although the contractor had not made any deposit in lieu of bond, this sum was owing to him by the Department at that date. Therefore, Mr. Paull considered the Department was amply protected.

57. Under cross-examination by Mr. Milvain, Q.C., Mr. Paull stated that he preferred a 100% performance bond rather than a deposit in lieu thereof. He had personally

(1) Exhibit 69 - Edmonton to Morinville Contract No. 459/47.

so recommended to the Minister and his Deputy. The Department recently adopted this recommendation.

Mr. Paull considered that it was much fairer to all concerned to have performance bonds covering all contracts, rather than have some contractors subjected to the very heavy financial burdens resulting from deposits.

58. In the course of cross-examination, Mr. Paull stated that, on very large contracts the Department had been modifying its requirements with respect to deposits and accepting 10% instead of the 20% called for in the specifications and contract. This appears to have been the arrangement with respect to the Morinville to Clyde Corner contract (1), although there is nothing in any of the correspondence or memoranda relating to that contract, to indicate when or by whom the decision was made. He thought the decision must have been made by conversation over the telephone or otherwise.

59. Under further cross-examination by Mr. Milvain, Mr. Paull admitted that the statute provided that no money was to be paid to a contractor, nor was any work to be commenced on any contract, until it had been signed and the required security had been given. The witness explained, however, that the Department had not signed or released the

(1) Supra, paragraph 51.

contract. Although the required security had not been obtained, and although the contractor had taken upon himself to commence work without a contract, it was Mr. Paull's contention that the Department was fully protected in two ways: firstly, by withholding payment of all moneys; secondly, by the fact that it did not have to recognize the contractor, there being no signed contract.

60. During the cross-examination of Mr. Paull, Mr. Milvain introduced an exhibit (1) which had been compiled by him from information taken from Exhibits 31 (2) and 32 (3). From this compilation, he explained that out of a total of 57 contracts, 41 showed that the amount actually paid was more than the amount of the original tender; 13 showed that the amount actually paid was less than the amount of the tender; one showed the amounts paid and tendered were exactly the same; and the remaining two contracts had not yet been completed.

Mr. Helman argued that Mr. Milvain's comparative table was entirely misleading because the tenders were all made on a basis of a certain number of units. Mr. Helman submitted that it was clear from the evidence adduced in

- (1) Exhibit 82, Statement showing reconciliation of Exs. 31 & 32 with respect to contracts which have been awarded between 1941 and 1955 and showing the amount actually paid by the Department on each project.
- (2) Statement showing contracts which have been awarded between 1941 and 1951 through advertisement and tender to contractors who have been indebted to the Treasury Branch, together with other tenders received.
- (3) Statement of contracts held by contractors who were indebted to the Treasury Branch 1941-1945.

respect to some of the contracts, that the number of units subsequently required were increased or reduced. It would then follow, according to Mr. Helman, that the total paid out under the contract would differ from the amount of the original bid. In Mr. Helman's submission, the comparison suggested by Mr. Milvain would be entirely valueless.

61. A document was introduced showing that on October 27th, 1948, O'Sullivan Construction Company had assigned as security in lieu of bond for the fulfillment of all requirements of Contract 459/47 (supra, paragraph 51) and Contract 504/48 (supra, paragraph 51) two cheques, namely, one for \$25,760.00 and one for \$45,040.00. The assignment was to His Majesty the King, represented by the Honourable the Minister of Public Works (1).

62. The condition of the Morinville to Clyde Corner highway was referred to in detail. Mr. Paull testified that after work had commenced under the original contract, it was found that the road was not in condition for the type of surfacing contemplated under the contract and that a "lift" of up to eighteen inches of clay would have to be placed over portions of the road in order to make the base adequate for the contemplated surface. The witness admitted that, in the final result, that which had started out as an asphalt sub-base and asphalt surface contract, ended as a

(1) Exhibit 83.

grade-building contract.

63. Under further cross-examination, Mr. Paull explained that the hard surfacing work contemplated with respect to Contract 635/51 (1) could not be proceeded with, because the road was not in condition. He stated that "it was decided to terminate Contract number 635/51 after the work to Berwyn was completed. It was further decided that immediate action should be taken to commence grading from Berwyn to the Sixth Meridian to bring the sub-grade up to the required standard. It was also agreed that Highway number 34 should be widened and graded. Accordingly, Contract number 660/51 (2) was drawn up with Mannix Limited. Prices in the new contract were negotiated on the basis of current contract unit prices for the year" (3). Mr. Paull went on to explain why the same contractor was given the second contract. He stated: "I think the feeling of the Department was while we had no legal obligation there might have been a certain moral obligation", (4) to see that the contractor had an opportunity to use his equipment, particularly as in this case the contractor had set up a very expensive plant for asphaltic work and had allocated heavy equipment for the job. Mr. Paull further stated that, by

- (1) Exhibit 50, Highway No. 34, Smoky River to Junction Highway No. 2, and Highway No. 2 from Berwyn to the 6th Meridian.
- (2) Exhibit 49, grading Berwyn to the 6th Meridian, Mannix.
- (3) Transcript of evidence page 430.
- (4) Transcript of evidence page 436.

the time the condition of the highway had been discovered, it might have been impossible for the contractor to allocate his equipment to some other contract, or to obtain another contract. This witness stated that the true condition of the highway was not ascertained until work had actually started, because it was only after some of the asphaltic surface had been laid that the weakness in the sub-grade showed up.

64. Mr. Paull further stated that in awarding the modified contract (1) the unit prices arrived at compared favorably with unit prices on other work in Northern Alberta.

65. With further reference to the Morinville-Clyde Corner contract (supra, paragraph 51) Mr. Paull explained that he was fully satisfied that all material billed to the Government and paid for, had actually gone into that road. He explained how portions of the highway had to be dug out in some places to a depth of three feet and back-filled with suitable material. This witness also went into great detail to explain the methods used by the Department for checking the amount of material; such as having checkers at the pit where the gravel was excavated;

(1) Contract 660/51, section 63 above.

checkers at the highway section where the gravel was being unloaded; and how the engineers on the job tabulated and checked on a daily basis the various figures as they were turned in to them. Mr. Paull described in detail the various tally books used and produced all those relating to the Morinville to Clyde Corner contract (1). He stated that the staff in his Department rechecked all of this data before the contract was finally paid out.

66. The Commission, with the full approval of all counsel, heard evidence respecting only those contracts which had been entered into by the Maintenance Branch with Frank O'Sullivan, O'Sullivan Construction Company, Mannix O'Sullivan Paving Company Limited and Fred Mannix Company Limited (2).

67. Mr. James H. Johnston, head of the Maintenance Branch of the Department of Highways, was the next witness called. Mr. Johnston, a graduate engineer, has been in the service of the Government for thirty-one years. He has been head of the Maintenance Branch since 1951. We find Mr. Johnston to be a credible witness and we accept his evidence.

A statement of contracts awarded by this Branch during the years 1951 to 1955 inclusive, was introduced by this witness (3).

- (1) Exhibits 89 to 98 inclusive.
- (2) Transcript of evidence pages 520-521.
- (3) Exhibit 24.

68. Mr. Johnston testified that in his Branch, in order to have the work commenced without delay, it was not usual to advertise for tenders in the press. As a rule tenders were invited from those contractors who, in the District Engineer's opinion, would be most likely to bid on the proposed project. Such contractors were generally those operating in the district or the territory near the site of the project. It was customary for the District Engineer to write to contractors inviting tenders, or, in some cases, he might even telephone to them. The District Engineer, upon receipt of the tenders, would forward them to Mr. Johnston's office with the recommendation to accept the lowest bid. Mr. Johnston, in turn, would list the bids and submit them for approval to the Deputy Minister, who would accept the lowest bid. This witness also stated that, in general, small contracts under \$3,000.00 would be negotiated.

69. It appeared from Mr. Johnston's evidence, that for the period 1941 to 1951 the O'Sullivan Construction Company at Lethbridge was the only one of the companies mentioned in paragraph 66 above, with which the Maintenance Branch had made any contracts. These contracts were for crushing and stock-piling of gravel.

70. In the material filed by Mr. Johnston, there were frequent references to the term "authorized Government rates". Mr. Johnston explained that this term had reference to the hauling of gravel. He further stated that "authorized Government rates" meant that the rates had been established by the Department and were based on mileage. For example, up to five miles of a haul the established rate was 15 cents per cubic yard mile; five miles up to ten miles was 13 cents per cubic yard mile, and so on. These rates had been set by the Department after due consideration, and were subject to revision as circumstances changed. They were arrived at, usually after discussion with the Truckers Association. It was mentioned by Mr. Mahaffy, Q.C., that arbitration proceedings had been taken about 1953 to establish such rates.

71. Mr. Johnston also gave evidence to the effect that, except for stock-piling and crushing of the materials, his Branch usually carried out the actual work of maintaining and repairing roads, and used its own equipment. He stated further that it was only in exceptional cases that equipment was rented or hired from contractors by the Maintenance Branch.

72. When asked whether his Branch had ever rented any equipment from one of the four contracting firms

mentioned in paragraph 66 above, Mr. Johnston stated that the only occasion was in connection with the Belmont road. Such rental was based on unit prices.

73. Leslie H. McManus, the Chief Bridge Engineer for the Department, and assistant to Mr. Paull from 1951 to 1954, gave testimony with respect to a discussion he had with Mr. MacPherson, the then Highway Commissioner, concerning the condition of the Edmonton to Legal and Clyde Corner Highway. We find Mr. McManus to be a credible witness and we accept his evidence. His evidence in part reads as follows:

" I first heard that the section of highway was to be surfaced just a matter of a week or two before the contract was drawn up and I discussed the condition of it with the Highway Commissioner, although I had not been asked to make a particular inspection, and we both agreed there were sections which were not in very good shape and that they would need reinforcing as the work progressed." (1)

In cross-examination by Mr. Milvain he qualified the evidence above quoted. The questions and answers are:

"Q Now I gather, Mr. McManus, that it was only about two weeks before the contract was let that you first heard about this road we have been talking about?

"A Yes, something like two weeks.

.....

"Q Did that discussion take place before or after the tenders were advertised?

"A I could not say -- it was very close to that time -- I don't know whether it was just before or just after the tenders were called." (1)

Under further cross-examination the evidence of Mr. McManus is in part as follows:

"Q Now then, Mr. McManus, had you not made just a superficial examination, but had made a real engineer's examination of that road, the condition that was later found would then have been ascertained by you?

"A At that time we had very little to go on in the way of information to make an engineering investigation soils-wise. The soil engineering, as a science, was in its infancy and I don't know that I could say actually that we would then have had a great deal of different information to go on than we had under the circumstances that did exist.

"Q Do you feel that even if a careful inspection by a competent engineer were made that it would not have revealed the fact the road was not in condition to surface?

"A I think we could have come to the conclusion there were sections not in shape.

"Q And you would have come to the conclusion quite extensive sections were not in shape?

(1) Transcript of evidence pages 589-590.

"A I rather doubt if we would have noticed all of them because very often they develop as the work progresses." (1)

74. Mr. McManus was the first witness who gave evidence with respect to Bridge Contracts.

75. The Commission, with the full approval of all counsel, heard evidence respecting only such bridge contracts as had been entered into by the Bridge Branch with Frank O'Sullivan, O'Sullivan Construction Company, Mannix-O'Sullivan Paving Company Limited and Fred Mannix Company Limited. It appeared that there were only four contracts to discuss (2).

76. Mr. McManus testified that the method of calling for tenders for bridge contracts was "quite similar" to that already described with respect to the Highway Construction Branch. He stated that it was not the policy of the Bridge Branch to enter into "negotiated contracts", their contracts always being by tender. He stated there had been one exception, namely, the concrete substructure for a bridge over the Old Man River at Lethbridge (3). Mr. McManus stated that bridge work did not lend itself to "extension contracts".

(1) Transcript of evidence pages 592-593.

(2) Exhibit 100.

(3) Paragraphs 77-82.

77. Considerable time was devoted to examination and cross-examination of this witness by counsel with reference to the contract with O'Sullivan Construction Company, and which was described as Contract number 438/47 (1). This contract was for a concrete substructure of the bridge over the Old Man River at Lethbridge.

In January 1947, tenders were advertised for in the usual way and only two bids were received. The first was from Bennett & White for \$176,375.00, and the second from Poole Construction Company Limited for a "cost plus fixed fee of \$7,500.00". The Highway Commissioner, the late N. W. MacPherson, sent the bid sheet covering the above tenders to the Deputy Minister, Mr. G. H. N. Monkman, stating that the bid of Bennett & White was very high and not recommended. Mr. MacPherson also stated that he did not consider "cost plus fixed fee" a satisfactory arrangement. The Deputy Minister wrote to the Highway Commissioner that he agreed with this recommendation not to accept the bids. Advertisements were again inserted in the usual manner inviting tenders. At this time no bids were received.

78. Mr. McManus testified, that so far as he could ascertain from examining the Department file (2), O'Sullivan

(1) 438/47 Concrete substructure for bridge over Old Man River, Lethbridge.

(2) Exhibit 101.

Construction Company was authorized on or about February 11th, 1947, to undertake the construction of the sub-structure of this bridge on the basis of a quotation received from that company on Contract Form dated February 10th, 1947. This quotation was \$95,250.00. The quantities quoted were the same as those called for in the two bids referred to in the previous paragraph. A \$20,000.00 marked cheque from this company was received as a deposit on March 10th, 1947. The contract was then executed by the Department and forwarded to the contractor. It appeared from the testimony of this witness that, as a result of an increase in the volume of solid excavation over and above that called for in the original specifications and estimates, the contractor received an additional \$10,789.66. The witness explained that a coal seam was unexpectedly encountered which necessitated the extra work (1).

79. Mr. McManus stated that it did not appear that there was a bid from O'Sullivan Construction Company when the other bids were opened. He further stated that the bid sheet did not indicate that any bid had been received from this company, and that there was nothing on the file to show that Mr. O'Sullivan or any representative of his company had contacted the Department about the time the tenders were called.

(1) Transcript of evidence page 630.

When questioned by Mr. Milvain this witness stated:

"Q Is that a usual thing that happens in the Department that after bids have been closed that a contractor will come along with a bid?

"A It does happen occasionally but in this case of course no bids were received at the time that they were called for by January the 24th.

"Q Do you know of any other case in your knowledge of the operations of the Department in which no bids came in in response to the advertisement but one does come in some two or three weeks later?

"A I cannot recall any particular incident." (1)

Mr. McManus admitted there was nothing on the file to indicate how Mr. O'Sullivan came into possession of the specifications upon which he based his bid.

80. Under cross-examination by Mr. Milvain, Mr. McManus stated that it appeared that, before the deposit in lieu of a bond had been received and before the contract had been executed, the Department had instructed Mr. O'Sullivan to unload some sheet steel piling to be used in connection with the bridge superstructure. This witness also stated that there was nothing on the file to indicate how the \$20,000.00 marked cheque came to be accepted in lieu of the 100% bond originally requested by the Department.

81. Mr. McManus was questioned with respect to the construction of a section of grade east of the aforesaid bridge. This section comprised the handling of 40,000 cubic yards of material. The evidence disclosed that bids were received from F. Anderson at 23 cents per yard, and from O'Sullivan at 45 cents per yard, and Anderson's bid was accepted. Subsequent to the acceptance of Anderson's bid, a bid was received from Eliason Brothers, presumably at a lower price. Mr. McManus stated that he considered that the Anderson contract had been entered into before the Eliason bid was received by the Department.

82. Mr. McManus stated that "at the present time we attempt to get foundation borings for particular information for the footings, the depth of footings, the type of work that has to be done below the surface." He stated this assisted his Department to formulate plans and specifications before calling for tenders, and to estimate as nearly as possible the correct quantities of materials to be supplied under the contract. He testified that it did not appear that such borings had been carried out with respect to the Lethbridge bridge.

83. Mr. McManus also gave evidence to the effect that it was the policy of his Department to allocate moneys for various bridge projects, but these allocations were for the Department's own use. He stated under cross-examination:

" Our allocations are to particular projects, but that is merely for our own use. It is not a definite commitment that we would spend that much, or only that much on a particular project.

"Q No, and would the amount of the allocation within your Department be information which is passed out to contractors?

"A No."

Under further cross-examination the witness continued:

"Q Or would your estimated cost as distinguished from the actual allocation be information that is passed on to the contractors?

"A No.

"Q So that if a contractor did gain knowledge of either your estimated cost or of the allocation, he would have to discover that by having some inside information?

"A Yes. That would not be too much use to him, because our estimated cost covers more items than are in the contract; that is the supply of material." (1)

84. This witness outlined the method of handing out copies of plans and specifications upon which the contractors based their bids. These were always available and were supplied to prospective bidders on request.

85. Part of the examination of Mr. McManus by Mr. Mahaffy is as follows:

(1) Transcript of evidence page 700.

"Q Do you have any knowledge of any case where any preference has been given to a contractor because of the fact that he was indebted to the Treasury Branch?

"A No, none whatever.

"Q Or because he had assumed the liabilities of a Treasury Branch debtor?

"A No.

"Q And have you ever been requested by an official of the Treasury Branch organization to give any special consideration to a contractor?

"A No.

"Q Have you ever been instructed or requested by a Minister of the Crown to give any special consideration to any particular contractor?

"A No." (1)

86. Mr. Avarad K. Olive, Superintendent of Treasury Branches since December 1st, 1939, was the next witness called. He was questioned in regard to indebtedness, both direct and indirect to Treasury Branches, of contractors holding Highways contracts. We find Mr. Olive to be a credible witness and we accept his evidence.

Mr. Olive stated that the Treasury Branches commenced loaning to the public in the Spring of 1941. He described the procedure which had been developed and adopted in respect of making loans. He testified that loans

(1) Transcript of evidence page 658.

over \$5,000.00 could not be made without first being referred to the Treasury Branch Loans Committee, of which Committee he has been Chairman since its inception. He would, therefore, have knowledge of all loans over that amount made by the Treasury Branches.

Mr. Olive identified a list (1) which he had prepared of all Highways contractors who were indebted to Treasury Branches during the period 1941 to 1955. This list was previously admitted as Exhibit 39. He also identified his letter addressed to Mr. McLelland, Office Engineer, Construction Branch, Department of Highways which was entered as Exhibit 51 (2), and which reads as follows:

" Confirming what I have already advised you, the following are the only persons, firms or corporations which have assumed responsibility for the liabilities of persons, firms or corporations indebted to a Provincial Treasury Branch, and which are shown on the list of all the contractors supplied by the main Highways Branch September 29th, 1955:

Fred Mannix and Company Limited
Mannix-O'Sullivan Paving Co. Ltd. "

87. Mr. Olive's attention was drawn to Exhibit 76 I (3), a memorandum addressed by Mr. Monkman to Mr. Huckvale, Provincial Auditor, in connection with the Morinville to

- (1) Exhibit 39, List of Contractors holding Highway Construction contracts while indebted to Treasury Branches from 1941-1955.
- (2) Exhibit 51, Letter from Olive to McLelland, Construction Branch, dated 4th October 1955.
- (3) Report (supra) paragraph 52.

Clyde Corner contract. Mr. Olive stated that early in July 1948, Mr. Foster, company engineer for O'Sullivan Construction, called on him. Mr. Olive's recollection of the conversation was, to quote in part:

"that they had been granted this extension from Morinville to Clyde, I think it was, approximately 25 miles, if I remember, and he said that as it was simply an extension of the contract from Edmonton to Morinville that there would be no deposit required." (1)

Mr. Olive further testified that the contract was later discussed by the Treasury Branch Loans Committee. Mr. Woodman, secretary to the Treasury Department and a member of the Loans Committee, telephoned the Committee's office and advised that the Department of Public Works would require a deposit of some \$70,800.00 for this work and that Mr. O'Sullivan and Mr. Foster were hoping to have the deposit "arranged in some manner". Mr. Woodman then met Mr. Monkman and agreed on behalf of the Loans Committee that if it was satisfactory to the Department of Public Works, the Loans Committee would forego or delay its payment. The witness later explained that by "forego" was meant that the payment of moneys his Department was to receive under the St. Albert contract would be postponed. This witness further stated that at that time O'Sullivan's contract to Morinville (supra,

(1) Transcript of evidence page 717.

paragraph 51) was practically completed and there was approximately \$55,000.00 due to O'Sullivan, as a holdback, plus a \$25,000.00 deposit under that contract.

Mr. Olive stated that he did not recall any other discussion in connection with the matter at that time. He stated that:

"The next feature I can recall was in October of '48, I think it was the 28th of October when I wrote Mr. Frame of the Department enclosing a cheque for \$45,040.00." (1)

This amount, along with the release of the deposit of the St. Albert contract, was used to constitute the deposit required under the Morinville-Clyde contract (2).

88. A further portion of Mr. Mahaffy's examination of Mr. Olive is as follows:

"Q Now, just a more general question, if I may, Mr. Olive, aside from this O'Sullivan contract that we have been discussing, can you recollect any occasion on which you have attempted in any way shape or form to put pressure on the Department of Highways to award contracts to your debtors?

"A No, sir.

"Q You don't know of any cases?

"A Not a case.

(1) Transcript of evidence page 718.
(2) Exhibit 69A, Contract number 504/48.

"Q Do you know of any case where anybody in your employ, or in your Department has done so?

"A No, sir.

"Q Or has anything of that nature been done to persuade or attempt to persuade the Department to grant contracts to contractors who had assumed liability for your debtors?

"A Not to my knowledge, sir. I might elaborate there, Mr. Mahaffy, a little bit. In a general way of contracts, we don't know anything about a contract until it is presented to us in the ordinary course of business for loan purposes. That is the contract is passed, we don't know anything about the Department of Public Works contract, or how they let them or anything else except what I see in the papers. A contract is brought in to a Branch, and if, if we consider the contractor is entitled to it we consider a loan, but it is not given solely against an assignment of a contract, but we do take assignments of contracts, any contract, to protect a loan.

"Q What you are saying is, that when you first know about a contract, it is when Mr. Contractor walks into your office with this document in his hand and says, now, I have got this contract and I need some help financing my operations?

"A That's right." (1)

89. Mr. Milvain cross-examined Mr. Olive in detail with respect to the banking transactions carried out by O'Sullivan and O'Sullivan Construction Company with the Treasury Branches. Mr. O'Sullivan first dealt with the Treasury Branches in May 1946. Mr. Olive's evidence indica-

(1) Transcript of evidence pages 719-720.

ted that during the entire period that the Treasury Branches were dealing with this contractor the total amounts of the loans outstanding fluctuated widely from time to time.

The first substantial loan was in May 1946, - \$25,000.00,- and gradually increased to an amount slightly in excess of \$402,000.00 by May 1949. To protect themselves, the Treasury Branches obtained a general assignment of book accounts, which was registered. From time to time, as the loans increased, the Treasury Branches took specific assignments of various large contracts. As an example of this type of contract the witness cited the St. Mary's River Dam project, a contract with the Dominion Government.

This witness testified that, from time to time, when loans were made for the purpose of acquiring new equipment, chattel mortgages were taken on such equipment. Mr. Olive stated that the general assignments taken by his Department to protect the indebtedness of O'Sullivan, covered not only whatever Government contracts O'Sullivan had, but also all his other contracts. The Highways Department would be advised each time such assignments were taken. He testified that statements of liabilities and receivables were also taken from time to time by the Treasury Branches for comparative purposes. The Treasury Branches also insisted on insurance being carried on the items covered by the chattel mortgages.

90. According to Mr. Olive's evidence, after May and June 1949, there were no further Highways contracts "let" to O'Sullivan Construction, but a new company known as Mannix-O'Sullivan Paving Company Limited came into the picture. An agreement, dated June 17th, 1949 (1), was entered into between Frank O'Sullivan, Fred Mannix and Company Limited, Mannix-O'Sullivan Paving Company Limited and the Provincial Treasurer. Under this agreement Mannix-O'Sullivan Paving Company Limited hired the chattels and equipment owned by Frank O'Sullivan. The rentals under this hire arrangement were assigned to the Provincial Treasurer of Alberta. As a condition to being a party to this agreement, the Provincial Treasurer insisted that the third company, namely, Fred Mannix and Company Limited, execute a guarantee that if during the period up to December 31st, 1949, the rentals did not reduce the indebtedness of O'Sullivan to \$200,000.00, the guarantor was to make up the difference. This amounted to a guarantee of approximately \$130,000.00. The assignment of rentals referred to in the agreement of June 17th, 1949 (1) was prepared as a separate document. The said agreement also provided that if Fred Mannix and Company Limited was called upon to make payment under the guarantee, the assignment would be diverted to the benefit of the guarantor. Mr. Olive stated that on

(1) Exhibit 108.

January 2nd, 1950, Fred Mannix and Company Limited paid the Treasury Branches \$123,000.00. By June 14th, 1951, the total liability of O'Sullivan Construction to the Treasury Branches was discharged.

91. Mr. Olive further testified that, because O'Sullivan had not been liquidating his loans in a satisfactory manner, and because of the difficulty with him in connection with deposits on tenders and contracts during the previous year, the management of the Treasury Branches did not wish to continue financing him on the same basis. Negotiations therefore extending over a period of some six to eight weeks culminated in the above mentioned agreement of June 17th, 1949.

92. Mr. Olive stated that, prior to June 17th, 1949, the Treasury Branches had not had any dealings with Fred Mannix and Company Limited. He further stated that, notwithstanding this Company was a guarantor under the terms of the agreement of June 17th, 1949, he did not ascertain what contracts the Company held or "was getting". However, Mannix-O'Sullivan agreed to furnish the Treasury Branches with statements covering the operations of Mannix-O'Sullivan Paving Company Limited. These statements came in regularly at the end of each month. The financial standing of Fred Mannix and Company Limited was also investi-

gated by checking with Dun's and the company's bank.

Mr. Olive stated that on June 18th, 1949, the Treasury Branches took a new mortgage from O'Sullivan, securing the total indebtedness which amounted to \$402,708.60. This included payment of certain outstanding trade accounts then payable by O'Sullivan.

Mr. Olive also indicated that as of this date there were other outstanding liabilities owing by O'Sullivan amounting to approximately \$190,000.00. The Treasury Branches took a second chattel mortgage on the same equipment for the sum of \$190,000.00 to secure whatever amount they might have to advance to retire such outstanding liabilities. He stated further that the Treasury Branches advanced a total of \$157,000.00 to pay such liabilities. As of June 30th, 1949, the total liability of O'Sullivan to the Treasury Branches was \$559,750.00.

The witness explained that the understanding at this time was to pay up "the outstanding liabilities of O'Sullivan so as to give him a clean sheet at the time the new company was formed." (1)

93. Under cross-examination by Mr. Helman, Q.C., Mr. Olive made it clear that neither Fred Mannix and Company Limited nor Mannix-O'Sullivan Paving Company Limited ever had an account or loan with the Treasury Branches.

(1) Transcript of evidence pages 793-794.

94. Mr. Olive testified further that on June 14th, 1951, the O'Sullivan indebtedness was paid in full, and that from that date on there was no liability of O'Sullivan Construction Company on the Treasury Branch books.

Part of Mr. Olive's cross-examination by Mr. Helman is as follows: (1)

"Q And you will recollect the evidence was given here that some time in '48 you had approached the Highway Branch with a view to having some adjustment made in that one contract that was then being negotiated?

"A Well, our object in any contact with the Department of Public Works was to get some money.

"Q Was to get money?

"A Yes.

"Q You were interested in getting money and the Highways Department was interested in getting highways, and sometimes those two things came into conflict with one another?

"A I think the Department of Public Works were interested in getting money at that time too.

"Q I beg your pardon?

"A Getting a deposit put up for the contracts.

"Q They were interested in getting the deposit?

"A Yes.

"Q And aside from that one approach that was made at that time, which was subsequently turned down by Mr. Huckvale, was there any time when there was any approach made by your Department to the Department of Highways in connection with deposits or contracts of any kind?

"A No.

"Q So that we can give a categorical answer to that?

"A Yes." (1)

95. The next witness called was George H. N. Monkman, who had been Deputy Minister of Public Works for sixteen years prior to his retirement on October 22nd, 1953. We find Mr. Monkman to be a credible witness and we accept his evidence.

He stated that following the creation of the new Department of Highways in 1951, he ceased to have any connection with Highways. He recalled that, in 1947, a contract was let to O'Sullivan Construction Company relative to a road, Edmonton to Morinville. Subsequently, in 1948 a negotiated contract was let to the same construction company for a road from Morinville to Clyde Corner. He further recalled signing the memorandum addressed to Mr. Huckvale, which was marked Exhibit 76 I (2). Mr. Monkman also remembered having some conversation with Mr. Olive on the subject referred to in the above mentioned Exhibit 76 I. He stated that he could not agree to the proposal suggested in that memorandum without the approval of the Provincial

(1) Transcript of evidence pages 805-806.

(2) Report (supra) paragraph 52.

Auditor. He also stated that he had no recollection of any other discussions with Mr. Olive relative to the O'Sullivan contracts, with the exception that Mr. Olive was pressing for the release of some of the money that was due to O'Sullivan for work performed. Mr. Monkman stated that Mr. Olive never spoke to him urging him to let contracts to the O'Sullivan Company. Mr. Monkman further testified that he had no knowledge of the standing of O'Sullivan's account with the Treasury Branches until the occasion when Mr. Olive came to his office, accompanied by Mr. Woodman.

Mr. Monkman stated that he knew of no preference shown to any contractor by reason of such contractor being indebted to the Treasury Branches or to any one else.

A part of Mr. Monkman's cross-examination by Mr. Helman reads: (1)

"Qso that you as Deputy Minister were aware that it was necessary to do a considerable amount of extra work, and supply a considerable amount of extra materials in connection with that '47 contract to Morinville?

"A Yes, that would be true.

"Q And was there ever any suggestion that you were giving this extra work with regard to this '47 contract to O'Sullivan because he was indebted to the Treasury Branch?

"A No."

(1) Transcript of evidence pages 818-819.

96. When Mr. Monkman was asked by Mr. Milvain, Q.C. whether he thought the opening of bids in public was a "good change", his answer was "Yes" (1).

97. Under further cross-examination as to whether the condition of the Morinville to Clyde Corner highway would have been discovered, had an adequate engineering survey been made before the calling for tenders, Mr. Monkman stated that it should have been discovered, but, apparently, was not. He also agreed that although a surfacing contract was actually let, it developed into a road-building contract.

Under further cross-examination by Mr. Milvain, Mr. Monkman stated that with respect to the Morinville to Clyde Corner contract, presumably, he, without reference to the Minister, had made the decision to reduce the 20% deposit to 10%, in lieu of a 100% performance bond. The witness gave a further explanation, under cross-examination by Mr. Milvain, as to what information would be before him in making his decision. His evidence is, in part: (2)

"Q And you say you would base that opinion solely on the nature of the work the contractor was doing?

"A And what knowledge we had of the contractor or contracting firm.

"Q When you speak of what knowledge, what field would that knowledge cover?

(1) Transcript of evidence page 826.
(2) Transcript of evidence page 839.

"A His ability to do the work and the previous work he had done, not only for the government, but other people.

"Q So the information that you would have before you would be solely with respect of technical ability to do the job?

"A That is correct.

"Q But no knowledge whatever of financial stability?

"A That is correct.

"Q Don't you think that was rather an unwise basis upon which to judge the strength of a security bond or performance bond?

"A In view of the experience we had I think we were fairly right, we never had one fail to do the job or performing the work they contracted to do." (1)

98. Mr. Monkman's attention was directed to the work on the Morinville-Clyde Corner extension by O'Sullivan Construction Company in 1948. A part of Mr. Monkman's cross-examination by Mr. Milvain is as follows: (2)

"Q I presume Mr. O'Sullivan would be coming endeavoring to persuade you to do anything that would help him along in the way of that bond?

"A He came in to see me to see if I could not allow them to pay him some money, that is why he came to see me. He came once or twice.

"Q You would, of course, remind him, under the terms of the statute, you could not pay him any money until the bond was filed?

(1) Transcript of evidence page 839.

(2) Transcript of evidence pages 842-843.

"A That is correct.

"Q Because that was the statutory condition which existed then in the Public Works Act?

"A Yes.

"Q You are aware too, I suppose, Mr. Monkman, that under the terms of that same statute it was also provided that no work shall be proceeded with under the contract until the contract had been executed by all parties and the performance bond filed?

"A Yes, I was aware of that.

"Q You were aware of the fact that notwithstanding the absence of the bond work was proceeding under this contract?

"A Yes, that is true.

"Q Did not that concern you at all?

"A Well, not particularly. We thought we were well secured as long as he kept working and we kept the money.

"Q Do you mean it was not of concern in your department that the terms of the statute which governed you were not complied with?

"A Definitely some concern but we seemed to be in a position where we had to carry on the best way we could so that we would be protected.

"Q Well now would not the department have been protected if the dictates of the statute had been followed and Mr. O'Sullivan was notified to discontinue work until a bond was filed?

"A Well, that might be true.

"Q That would have been a proper compliance with the statute?

"A Yes.

"Q But that was not done in this case?

"A That is correct." (1)

99. Under further cross-examination, Mr. Monkman agreed that, if any information with respect to the Department's estimates and plans for future construction were obtained by any contractor, such information would, presumably, result from a leakage from some source within the Department itself.

100. Mr. Duncan B. MacMillan, who became Minister of Public Works for the Province in 1948 and served in that capacity until November 1950, was next called. We find Mr. MacMillan to be a credible witness and we accept his evidence. Mr. MacMillan stated that work on the Morinville to Clyde Corner road had been hurried up by his Department because of pressure brought by residents, Boards of Trade and other groups in the northern portion of the Province. To quote the witness:

".....the north country, Peace River, Grande Prairie, all that country arguing for a road to the north, and this was giving them a piece of pavement." (2)

(1) Transcript of evidence pages 842-843.
(2) Transcript of evidence page 861.

Mr. MacMillan stated that, to his knowledge, he was never approached by anybody in the Treasury Branches, or by anyone, with a request for preference to be shown in the awarding of highway contracts to a contractor or contractors, by reason of the fact they were indebted to the Treasury Branches. He further stated that he could not remember Mr. O'Sullivan ever being in his office, and did not believe he knew at the time that Mr. O'Sullivan was dealing with the Treasury Branches.

101. The last witness on this point of reference was Edward Walden, called by Mr. Milvain, Q.C. We were not impressed by his evidence. He stated that during the years 1946 and 1947, he was in the employ of Bennett & White of Calgary. He assisted in preparing the bids submitted by the firm on various jobs. He recalled the advertisements of December 1946 calling for tenders on the bridge to be built at Lethbridge by the Bridge Department (1). He confirmed the fact that his company put in a bid for \$176,375.00 in answer to the first advertisement. He further testified that on the day he had forwarded his company's bid, namely, December 29th, 1946, he had a conversation with Mr. O'Sullivan, who gave him to understand that he, O'Sullivan, was also submitting a tender,

(1) Contract 438/47 - Concrete substructure for bridge over Old Man River.

and that Bennett & White and O'Sullivan would be the only tenderers. According to the witness, O'Sullivan indicated his bid would be between \$60,000.00 and \$70,000.00. Mr. Walden expressed the opinion that this bid would be too low. He stated that O'Sullivan replied, he could justify a lower bid, and take a chance on it, because he had a personal knowledge of the river bed at the point where the bridge was proposed.

102. Under cross-examination by Mr. Helman respecting the conversation Walden had with O'Sullivan, the following testimony appears:

"Q And, at some stage he came back and gave you a figure of \$90,000.00?

"A That was on the Monday morning, no, he didn't give me any figure on \$90,000.00, he said that he had heard the appropriation was \$90,000.00 and if we wanted to go in together we could get the job for \$90,000.00.

"Q And, he gave you an offer to go in with him for \$90,000.00?

"A Yes.

"Q And, you still wouldn't have anything to do with it?

"A No." (1)

103. Under further cross-examination by Mr. Helman, Mr. Walden described certain difficulties that had been experienced between his company and the O'Sullivan firm, and also between his company and the Provincial Government, arising out of misunderstandings with respect to the Spring Coulee Dam contract, and the Calgary Technical School contract.

104. Under cross-examination of Mr. Walden by Mr. Mahaffy, the following appears (1):

"Q Now, have you had any other experiences of information coming to you as a contractor that you didn't think you should have had?

"A No, I don't think so.

"Q You don't know of any other occasions?

"A No."

105. This concluded the evidence under this term of reference.

OUR FINDINGS ARE AS FOLLOWS.

We are satisfied that the method of calling for tenders and the awarding of those contracts, respecting which we heard evidence, complied with all statutory requirements, with the exception of Highway Contracts Numbers 459/47 (Edmonton to Legal) and 504/48 (Morinville

(1) Transcript of evidence pages 964-965.

to Clyde Corner), awarded to O'Sullivan Construction Company in 1947 and 1948 respectively. These two contracts have already been reviewed by us in some detail in the preceding synopsis of the evidence (1).

106. In each of these two cases, the contractor was allowed to proceed with the work before contracts were signed by all the parties, and before the required security was given. This contravened section 18, sub-section (3) of The Public Works Department Act, supra, which reads as follows:

"No sum of money shall be paid to the contractor nor shall any work be commenced on any contract until the contract has been signed by all the parties named therein nor until the required security, if any, has been given."

107. The aforesaid sub-section of the Act may also have been contravened with regard to Bridge Contract number 438/47 (concrete substructure for bridge over Old Man River at Lethbridge). In this case the Department of Public Works instructed the contractor to unload certain sheet steel piling at the bridge site, prior to the contract having been signed or the required security given.

(1) Supra, paragraphs 51-56, 58, 61-62, 65, 87, 95, 97-98 & 100.

It is fair to state, however, that in each of these three cases, no money was paid to the contractor until the required securities had been given and the contract signed by all the parties.

108. We are satisfied that the present standard procedure in the awarding of contracts by the Department of Highways is by calling for tenders. The procedure begins by an advertisement being inserted in three Alberta papers, namely, the Edmonton Journal, the Calgary Albertan, and the Lethbridge Herald, and where the Trans-Canada Highway is involved, in some papers published outside the Province. The sample advertisement filed as an exhibit sets out the qualifications required of the contractor regarding the deposit, surety bonds, residence and other qualifications, closing time and date, and also names the places where specifications and contract forms may be obtained.

109. The tenders are delivered to the Deputy Minister of Highways in sealed envelopes. The tenders are opened by the Deputy Minister, in the presence of a representative of the Audit Department, the Departmental Secretary-Accountant, and the Branch Head concerned. When tenders are being opened for the construction of sections of the Trans-

Canada Highway, the Federal Supervising Engineer is also present. Since August 1955, all tenders have been opened in public.

110. The Deputy Minister opens all envelopes, removes from each the tender and accompanying bid bond, and reads aloud the bid bond. The Secretary-Accountant records this information on bid sheets. Each open tender is then handed to the Branch Head, who reads aloud the total amount of such bid. The Secretary-Accountant enters this information on the bid sheet. Each tender and each bid bond are then handed to the representative of the Audit Department, who makes such extracts as his Department requires. In the case of Trans-Canada Highway contracts, the Federal Supervising Engineer also records such information as he requires.

111. All tenders, bid bonds, and the bid sheet are then taken by the Branch Head to his office, where he hands them to his office engineer, who records on the bid sheet the prices of the various items covered in each tender. The office engineer checks all entries for mathematical errors and marks the corrections, if any, in red on the bid sheet. He then signs the bid sheet, showing that it was compiled in the office of the Branch Head.

112. All bid bonds are delivered to the Secretary-Accountant for safe keeping. All tenders, except the

lowest, are retained by the office engineer, pending the awarding of the contract. In all cases, subject to certain exceptions which we will mention, the lowest tender is accepted. However, there are cases where, for good reason, all bids are rejected and new tenders called. The lowest tender and the bid sheet are then returned to the Branch Head, who in turn examines the tender and the bid sheet to determine that the office engineer's work is in order. The Branch Head also examines the list of equipment, furnished by the contractor, to ascertain whether the contractor is capable of carrying out the project for which he has tendered. The Branch Head then signs the bid sheet, and makes a notation thereon that a 100% performance bond is required. Before May 1st, 1951, a marked cheque for 20% of the contract price was acceptable in lieu of a performance bond, but in a few instances 10% was accepted. The original copy of the tender is returned to the office engineer for safe keeping.

113. The Branch Head then returns the completed bid sheet to the Deputy Minister. If he is satisfied that everything is in order, the Deputy Minister inserts the name of the lowest bidder in the space provided on the bid sheet and signs it. The bid sheet is then taken to the Minister, who, by his stamp and initials, approves the awarding of the contract.

114. If, however, for any reason the Branch Head considers that there are circumstances connected with the lowest bidder, which would affect his carrying out of the contract, he so advises the Deputy Minister. Upon receipt of such information, or if there are circumstances of which the Deputy Minister is aware, a further investigation may be warranted. If, following such an investigation by the Minister and the Deputy Minister, they consider that the contract should not be awarded to the lowest bidder, a recommendation is made for an Order in Council rejecting the lowest bid and awarding the contract to the next lowest bidder. Such recommendation carries with it the reasons for the rejection.

115. The evidence shows five contracts where the second lowest tender was accepted, instead of the lowest tender, on the authority in each case of an Order in Council. Details of these contracts and the reasons for each Order in Council, are compiled in Appendix V.

116. The bid sheet is then returned to the Branch Head, who advises the unsuccessful bidders of the awarding of the contract, and their bid bonds are then returned. The name of the successful bidder and the amount of his tender, together with a list of all other bidders and amounts of their tenders, are released to the press.

117. Three copies of the contract are typed and forwarded to the successful bidder. The contractor is instructed to sign and return two copies of the contract together with a performance bond for 100% of the amount of the bid. The third copy is sent to the contractor's bonding company. The two signed copies of the contract are returned to the Branch Head, together with the executed performance bond, and both copies are taken to the Minister for signature and seal. The original copy and the performance bond are placed in the files of the Branch Head. The second signed and sealed copy is sent to the successful bidder, and his bid bond is returned.

118. In certain instances the procedure as outlined is not followed. For example, a contractor may finish his contract in the early Fall, with the possibility of a continuance of good construction weather. To take advantage of this, he may be granted an extension of his existing contract. The extension would cover an additional length of road over and above that specified in the original contract, and at the same unit prices. It would appear from the evidence before us that there were other reasons for extensions in addition to the one outlined above. Appendix VI shows 24 extension contracts from 1941 to 1955. Appendix VII gives the reasons for each of the

extensions referred to in the extension contracts covered in Appendix VI.

119. A further exception to the standard procedure of calling for tenders is in the awarding of what is known as "negotiated contracts". When it becomes evident to the Department, that certain work is immediately necessary, and if a contractor is working on another project close by, he may be asked to submit prices for which he will do this additional work. If his prices are acceptable, a contract is entered into with him.

Another reason why a contract may be negotiated, would be where some special advantage can be gained by the Department. The evidence before us indicates that with respect to the Construction Branch, 15 contracts were negotiated, in whole or in part, during the period 1941 to 1955 inclusive. Appendix VIII is a compilation of the general details with respect to such 15 negotiated contracts. Appendix IX gives the reasons for negotiating the contracts listed on Appendix VIII.

The evidence adduced relating to Bridge Branch contracts shows that all contracts considered by us were awarded after the calling for tenders, with the exception of one negotiated contract, Number 438/47, relating to the bridge over the Old Man River near Lethbridge (supra, paragraph 77).

120. Another exception to the standard procedure, is by what are called "invited tenders", where very small contracts are concerned. A number of contractors, usually local, are asked to submit prices, if they are interested. The lowest bid is accepted and the contract executed. In such cases, performance bond and deposit requirements are usually waived. This procedure is followed mainly by the Maintenance Branch. An examination of the evidence before us shows that, occasionally, some of these invited tenders merge into negotiated contracts. Only one "invited tender" contract was considered in detail by us. This related to the paving of the road from Highway 15 to the Belmont Rehabilitation Centre. This contract forms the subject matter in reference (d).

We are satisfied that no preference has been shown in the awarding of highway construction contracts, to persons, firms or corporations by reason of their being indebted to a Provincial Treasury Branch, or to persons, firms or corporations by reason of the fact that they assumed responsibility for the liability of persons, firms or corporations indebted to a Provincial Treasury Branch.

We heard a vast amount of evidence respecting the construction of certain highways.

We are, of course, well aware of the fact that the construction of highways in Alberta is a task of ever increasing magnitude. It is common knowledge that special problems arise owing to the varying complexities of our soil and the extremes of our climate.

The terms of the Commission invite us to make such recommendations as we may consider proper, and to report thereon to the Lieutenant Governor in Council.

Accordingly, with respect to the construction of highways in Alberta we make the following recommendations:

- (1) Tenders should always be called for in the construction of highways.
- (2) Advertisements for tenders for the construction of highways should be published as soon as possible after the Legislature has authorized the expenditures for same.
- (3) Such advertisements should provide a reasonable time for contractors to submit their bids.
- (4) The practice of opening of tenders in public should be continued.
- (5) Successful tenderers should be required to post a 100% performance bond.
- (6) Successful tenderers should be required to provide a maintenance bond, to be in force for a reasonable period, to protect the Department against poor workmanship.
- (7) The evidence indicates that tests of soil and materials are vital to the efficient construction of stable highways; further, that such tests provide the Department

with information which is of importance in drawing up specifications and in arriving at accurate estimates of cost.

We observe from the evidence that a programme of testing which was commenced in 1938 has been greatly expanded, and that a new Highways Testing Laboratory was set up in 1954.

We urge that emphasis be placed on its development, to the end that it will at all times be furnished with the most up-to-date equipment and manned by the most competent personnel available.

While we realize that the present practice of the Department of Highways may well be in accord with the above recommendations, nevertheless we think that they are of sufficient importance to be emphasized.

1. We next considered paragraph (d) of the Commission, namely:

"to investigate and report upon the facts concerning the building of a paved road by the Department of Highways from Highway 15 to the Belmont Rehabilitation Centre and the facts concerning the building and paving of a road from the Rehabilitation Centre to the Belmont Drive-In Theatre." (1)

2. Before hearing evidence on this subject, the Members of the Commission, accompanied by counsel and certain officials of the Department of Highways, made an inspection of the roads in question, the buildings known as the Belmont Rehabilitation Centre, and also the Belmont Drive-In Theatre.

3. Three witnesses were called, namely, James H. Johnston, head of the Maintenance Department of the Department of Highways; Donald C. Ritchie, District Engineer with the Department of Highways, in charge of the area in which the Belmont Rehabilitation Centre and road are situated; and Lucien Maynard, Q.C., Barrister and Solicitor, formerly Minister of Municipal Affairs and later Attorney General of the Province of Alberta.

4. Various maps of the roads forming the subject matter of this reference were produced and filed. Such.

(1) Exhibit 5.

maps were identified by Mr. Johnston, the first witness called (1).

5. Mr. Johnston gave evidence in part as follows. The road known as the Belmont Road commences at Highway 15, immediately outside the northeast corner of the Edmonton City limits, and extends a distance of approximately one and a quarter miles in an easterly direction, to the easterly limit of the Provincial Government Rehabilitation Centre property. A branch of the road runs from the northwest corner of the property along the length of the western boundary.

6. Mr. Johnston further testified that the stretches of roadway so described were constructed by the Government of Alberta, but that a further extension of the road from the northeast corner of the Rehabilitation Centre property, to what is known as the Belmont Drive-In Theatre had been constructed by the owners of the theatre.

7. Mr. Johnston testified that the original road was an ordinary country road under the control of the Municipal District of Sturgeon. He stated further that it was the policy of the Government to service their institu-

(1) Exhibits 110, 111 and 112, maps showing Edmonton and adjoining areas to north and east, location of Belmont Rehabilitation Centre and Belmont Drive-In Theatre.

tions with "good access roads" (1).

8. Mr. Johnston testified that the Legislative Assembly of the Province of Alberta, at the Spring Session of 1954, had provided an extra appropriation vote, number 2106-1-D, known as a Special Contingency Vote, to be used for the construction of these access roads in Municipal Districts. He stated that the Government pays the full cost of such construction. He also stated that Municipal Districts are reluctant to construct these access roads, because they do not receive any tax revenue from the institutions served by such roads.

9. Mr. Johnston indicated that the Department of Highways received its instructions in March 1954. The original instructions were to construct the road from the City limits to the northwest corner of the Government's property, and then south along the western boundary. The standard of construction was to be asphalt, with a twenty-four foot width, which width was subsequently changed to twenty-six feet.

10. Mr. Johnston gave further evidence to the effect that Mr. D. C. Ritchie carried out the necessary preliminary surveys. He also stated that because the project was a small one, contractors would not be interested

(1) Transcript of evidence page 869.

in bidding. Therefore, it was decided to ask Voice Construction Company if it would undertake the grading and paving, and submit detailed prices. This company was chosen as it had been carrying out some road work for various Municipal Districts. Mannix-O'Sullivan Paving Company was carrying out asphalt paving for the City of Edmonton in that area, and this company was also asked if it would submit a price.

11. Mr. Johnston stated that the bid of the Voice Construction Company was accepted by the Department for the grading, as it was found to be reasonable. The bid of Mannix-O'Sullivan Paving Company was accepted for the asphalt work, as it was the only bid which conformed to the Government specifications.

12. Mr. Johnston further stated that the work was commenced about the middle of July, 1954. After the work was commenced, the Honourable Lucien Maynard, Q.C., then Attorney General, the Honourable G. E. Taylor, Minister of Highways, Mr. Ritchie and Mr. Johnston made an inspection trip over the road. As the plan of the proposed lay-out of the Rehabilitation Centre property showed one of the main buildings adjacent to the north boundary of the land, it was decided that the road should be constructed along the north boundary to the northeast corner, to provide access to this main building. This extension of some 1540

feet of road was, therefore, added to the original plan, and the contractors were advised accordingly.

13. Mr. Johnston further testified that it was found, on investigation, that the right-of-way would not provide sufficient material to construct the grade, as approximately one thousand feet of it was low-lying, and also because of the fact that the change had been made from a width of twenty-four feet to twenty-six feet. This would require an additional twelve thousand cubic yards of earth. As the Belmont Drive-In Theatre Company was excavating on its land, Mr. Ritchie approached the management to obtain this earth without cost to the Department, and this arrangement was carried out. Mr. Johnston stated that the total cost of the entire road, including grading and surfacing, was \$58,159.06. He also stated that he considered this price for one and a half miles of paved asphalt road was very satisfactory.

14. Mr. Johnston testified that his branch had nothing to do with the construction, grading or paving of that portion of the road which extended from the northeast corner of the Rehabilitation property to the Belmont Drive-In Theatre. He further stated that there was no Government equipment, or personnel, used on that portion of the road.

15. Under cross-examination by Mr. Milvain, Mr. Johnston testified that no special survey was made to estimate the volume of traffic that might be expected to use the road or the number of people living in that area. He further stated that it was his understanding that the general policy of the Government was to build a "pretty fair asphalt road" to Government institutions (1).

It was brought out in his evidence that the road would be used by visitors, officials, employees and suppliers of the Rehabilitation Centre. It would also be used by a few farmers in the vicinity and by the patrons of the Belmont Drive-In Theatre.

16. Mr. D. C. Ritchie, District Engineer, testified that at some time prior to March 29th, 1954, he was requested to make a survey of the road to the proposed site of the Rehabilitation Centre. This survey was completed by May 14th, 1954. Mr. Ritchie stated that because his road crew was already committed to other projects in the district, he could not undertake the actual construction of the road. He further confirmed, that as a result of the commitments of his crew, the arrangement to invite bids from Voice Construction Company and Mannix-O'Sullivan Paving Company Limited, as described

(1) Transcript of evidence page 880.

by Mr. Johnston, was carried out.

17. Cross-examined by Mr. Milvain, the following evidence was given by Mr. Ritchie, in part:

"Q A 24 foot road would have served the need of the Centre and the people in the surrounding district?

"A I would answer that question, sir, in this respect, a 26 foot top is standard as set forth by our department for this type of road, and a 24 foot top possibly might be a little, not give the travelling public the safety factor in width that they might expect to find on this type of a road.

"Q At the time you decided to change from a 24 foot road to a 26 foot road, had your department become aware of the fact that a drive-in was contemplated in that area?

"A Not to my knowledge, sir, no, sir." (1)

18. Mr. Ritchie was cross-examined as to the reasons for the decision to carry out the additional extension from the northwest corner of the Government's property along the north edge to the eastern limits of the property. He stated that it was agreed by all present, at the time of the inspection of the property in July, 1954, that if it was proposed to carry out this additional work at some future date, the logical time to do it would be when the other portion of the road was under construction

(1) Transcript of evidence page 894.

and the contractors were actually on the job. He further stated that obtaining 12,000 cubic yards of material, without cost, constituted a considerable saving to the Government.

19. The next witness called was Lucien Maynard, Q.C. He stated that although the Government originally contemplated some form of Rehabilitation Centre prior to 1953, the actual appropriation was brought down in the 1953 Session, and the site was acquired sometime about June of that year. He stated further, that temporary buildings were first erected in the Summer and Fall of 1953, and permanent buildings are now under construction. His evidence was that the project was designed for 125 inmates, with provision for future extension to accommodate an additional one hundred. He stated that the Belmont Rehabilitation Centre came under his jurisdiction as Attorney General.

20. Mr. Maynard testified that Belmont Drive-In Theatre Limited is a company with three shareholders, namely, Charles Rapp, Jake Superstein and himself. These three shareholders first contemplated building a drive-in theatre in May 1953. In June of that year, Mr. Maynard approached the Municipal District of Sturgeon, as a private citizen, for permission to construct a drive-in theatre, not in its present location, but in a location

north of the city limits. A meeting of the Municipal District Council was held in September of that year, at which representations were made on his behalf. After that meeting, it became clear to Mr. Maynard that the Council was divided on the subject and that, in all probability, the application would be refused. A new site was then sought by the three shareholders, in the area east of the Rehabilitation Centre. The present location of the Belmont Drive-In Theatre was finally decided upon, as being the best and most scenic site. Accordingly, on October 6th, 1953, the original application to the Municipal District was withdrawn, and a new application was substituted with respect to the proposed new location.

21. Mr. Maynard testified that no financial or any other assistance was received by the Theatre Company from the Municipal District with respect to the construction of that portion of the road which extended from the eastern limits of the Rehabilitation Centre to the theatre property. He stated that this stretch of roadway cost the theatre company approximately \$6,000.00, and that there was no contribution of any money, equipment, or personnel by the Alberta Government towards this portion of the road.

22. A portion of Mr. Milvain's cross-examination of Mr. Maynard was as follows:

"Q So that when the site was acquired, it was then clear that a road would have to be furnished to get there?

"A Yes, definitely.

"Q Yes, and I suppose if the Government had not undertaken the surfacing of the road out there to the Belmont Centre, then the drive-in would have had to provide that stretch of road too?

"A At that time, Mr. Milvain, the Government had not undertaken the construction of a paved road to the Centre, but it was evident that the Government would do as it had been doing at all its Government institutions, provide a suitable road to the Rehabilitation Centre." (1)

23. This concluded the evidence on this term of the reference.

OUR FINDINGS ARE AS FOLLOWS.

We find that the three witnesses, namely, Messrs. Johnston, Ritchie and Maynard, who gave evidence on this reference, are credible witnesses. We accept their testimony, which succinctly outlines the facts pertaining to this phase of our investigation.

The Government acquired the site for the Belmont Rehabilitation Centre in June 1953. To ease the overcrowding of Fort Saskatchewan Gaol, construction on a temporary

(1) Transcript of evidence page 929.

building on the site was commenced in that year; but was not ready for occupancy until 1954. At the time of the hearing before us, some fifty inmates were housed in this building. A new building is under construction to accommodate 125 inmates, with provision for a future extension to look after an additional 100.

We are satisfied that, in 1954, the Department of Highways constructed the Belmont paved road from Highway 15 to the northeast corner of the Rehabilitation Centre, for the purpose of providing a good access road. According to the evidence, this is a general policy of the Government.

We are further satisfied that the Belmont Drive-In Theatre Limited paid the entire costs of building and surfacing the road from the Rehabilitation Centre to the Belmont Drive-In Theatre, and that there was no contribution of money, equipment or personnel by the Alberta Government towards such road.

CERTIFIED COPY OF ORDER IN COUNCIL
OF THE PROVINCE OF ALBERTA, dated Friday,
September 2nd, 1955, approved by His Honour
the Lieutenant Governor.

The Executive Council has had under consideration the report of the Honourable the President, dated September 2nd, 1955, stating that:

WHEREAS certain charges, allegations and reports relating to the conduct of the business of government in the Province of Alberta have been made in speeches, articles and editorials published in newspapers circulating in the Province of Alberta and have been made in reports of meetings, statements and addresses published in newspapers circulating in the Province of Alberta and also on the radio and television in various parts of the Province of Alberta; and

WHEREAS it is deemed expedient and in the public interest that an inquiry be made under the provisions of The Public Inquiries Act, being chapter 139 of the Revised Statutes of Alberta, 1942, in order to investigate the said charges, allegations and reports as contained in the said speeches, articles, editorials, newspaper reports and radio and television broadcasts and to report thereon to the Lieutenant Governor in Council; and

- 2 -

WHEREAS it is deemed expedient that a Commission issue to the Honourable Mr. Justice Hugh John Macdonald, a Justice of the Supreme Court of Alberta Trial Division, Chairman, John Dower, of the City of Edmonton, in the Province of Alberta, Dr. George Harrison Villett, of the City of Edmonton. in the Province of Alberta, Maurice Brown, of the City of Calgary, in the Province of Alberta, and J. H. Galbraith, of the Town of Ponoka, in the Province of Alberta, appointing them as Commissioners to conduct the said inquiry, and that the said Commission do declare the said charges, allegations and reports to be matters of public concern;

THEREFORE, upon the recommendation of the Honourable the President, the Executive Council advises that a COMMISSION do Issue appointing

The Honourable Mr. Justice Hugh John Macdonald
(Chairman)

John Dower

Dr. George Harrison Villett

Maurice Brown, and

J. H. Galbraith

as Commissioners to conduct the said inquiry

- (a) to investigate and report upon the facts concerning the method of calling for tenders and awarding of building construction contracts by the Department of Public Works, and in particular as to whether

- (1) the Department was justified in specifying the use of precast concrete, Ytong or cellular blocks in those cases where the use of such products was specified;
 - (2) in connection with such contracts the Department showed any preference for any materials by reason of the fact that a former Cabinet Minister or his relatives had a financial interest in the company which manufactured such materials;
- (b) to investigate and report upon the facts concerning methods used by the Department of Public Works in the buying, selling, leasing or otherwise dealing in real property and in particular to investigate and report upon the facts
- (i) concerning the purchase, sale or leasing, or
 - (ii) whether any Cabinet Minister or Member of the Civil Service made any personal gain from the purchase, sale or leasing
- of the following properties:
- (1) Provincial Building No. 2, Edmonton
 - (2) Alberta Block, Jasper Avenue West, Edmonton
 - (3) Seventeenth Avenue West Liquor Store, Calgary

- (4) Ninth Avenue West Liquor Store, Calgary.
 - (5) Proposed gaol site near Chestermere Lake
 - (6) Spy Hill gaol site near Calgary;
- (c) to investigate and report upon the facts concerning the method of calling for tenders and awarding of highway construction contracts by the Department of Highways; and in particular to investigate and report upon whether in any instance any preference has been shown in the awarding of highway construction contracts to persons, firms or corporations by reason of their being indebted to a Provincial Treasury Branch, or to persons, firms or corporations by reason of the fact that they assumed responsibility for the liabilities of persons, firms or corporations indebted to a Provincial Treasury Branch;
- (d) to investigate and report upon the facts concerning the building of a paved road by the Department of Highways from Highway 15 to the Belmont Rehabilitation Centre and the facts concerning the building and paving of a road from the Rehabilitation Centre to the Belmont Drive-In Theatre;

- (e) to investigate and report upon the facts concerning the method of exchanging mineral rights owned by the Crown for mineral rights owned by others as authorized under the provisions of section 19, paragraph (a) of The Mines and Minerals Act, being chapter 66 of the Statutes of Alberta, 1949; and in particular to investigate and report upon the facts concerning the exchange of certain mineral rights between the Honourable E. C. Manning and the Crown in the right of the Province of Alberta as evidenced by Order in Council numbered O.C. 1707/51 dated November 28th, 1951, and published in the Alberta Gazette on the 15th day of December, 1951;
- (f) to investigate and report on the facts concerning the general procedure followed by the Treasury Branches with respect to making loans and in particular the making of loans by the Treasury Branches to Members of the Legislative Assembly and whether any loss was sustained by the Treasury Branches by reason of such loans, provided that in the public interest and to protect the interest of customers of the Treasury Branches no investigation shall be made into loans made to or other dealings with the Treasury Branches by any other person;

and to report thereon to the Lieutenant Governor in Council and to make such recommendations to the Lieutenant Governor in Council as the said Commissioners may in their discretion consider proper; and

FURTHER that the said Commission do declare the said charges, allegations and reports to be matters of public concern; and

FURTHER that the said Commission do confer upon the Honourable Mr. Justice Hugh John Macdonald, John Dower, Dr. George Harrison Villett, Maurice Brown and J. H. Galbraith the power of summoning witnesses before them and of requiring such witnesses to give evidence on oath, orally or in writing, or on solemn affirmation (if they are persons entitled to affirm in civil matters) and to produce such documents and things as the said Commissioners may deem requisite to the full investigation of the matters into which they are appointed to inquire; and

FURTHER that the said Commission do confer upon the said Commissioners the same power to enforce the attendance of witnesses and to compel them to give evidence as is vested in any court of record in civil cases.

Edmonton, Alberta,
September 2nd, 1955.

In closing our report, we wish to take this opportunity of thanking all counsel who appeared before us, for their invaluable assistance.

ROYAL COMMISSION

NOTICE

Notice is hereby given that the Royal Commission appointed by the Lieutenant Governor-in-Council to investigate certain charges and allegations made during the Provincial Election Campaign of 1955 will open its public hearings at the Court House, Edmonton, Alberta, on Monday the 19th day of September, 1955, at nine o'clock in the morning.

All persons or organizations desirous of submitting evidence to the Commission are urged to be prepared by the above date in order that they or their agents or counsel may be ready to proceed when called upon. Every effort will be made by the Commission to meet the convenience of all persons interested. Such persons are requested to co-operate fully with the Commission in order to avoid delays.

All such persons or organizations are requested to communicate with J. C. Mahaffy, Q.C., Commission Counsel, at 900 Lancaster Building, Calgary, Alberta, as soon as possible and advise him of the general nature of the evidence to be submitted.

Dated this 6th day of September, 1955.

H. J. Macdonald, J.S.C.
Chairman

ADVERTISING "DUMMY" SHEET

Prepare your Copy in the Space on Your Typewriter, Single Space Only

2 Departmental Copy FOR LEGAL ADVERTISEMENTS ONLY

GOVERNMENT OF THE PROVINCE OF ALBERTA

Prepare Your Copy in Triplicate.

Sheet No. 1—To be retained for your Departmental File.

Sheets Nos. 2 and 3—To be attached with requisition Form P1 and forwarded to the Purchasing Agency.

This Advertisement to Appear in:

- Edmonton Journal
- Calgary Albertan
- Lethbridge Herald
- Edmonton, Alberta.
- Calgary, Alberta.
- Lethbridge, Alberta.

and to be inserted as follows:

Wed	31st	day of August	1955
Thu	1st	day of Sept.	1955
Fri	2nd	day of Sept.	1955
Sat	3rd	day of Sept.	1955

Authorized by


REMARKS:

Charge Vote 2154 B
Department of Highways.

NOTE:

Agate—12 Lines Typewriter—1 Inch.
8 Point—9 Lines Typewriter—1 Inch.

The Director of Purchases will not accept Invoices for approval for payment of any advertising that has been arranged for by Departments direct with newspapers or publishers.

AGATE	PROVINCE OF ALBERTA Department of Highways	8 POINT
20	SEALED TENDERS will be received by the undersigned up to 11 o'clock A.M. Standard Time Tuesday, September 6th, 1955, for the construction of the following works: <u>Highway 43, Greenwood to S. of Blue Ridge</u> <u>High 60.14 to Mile 66.80</u> <u>Grading, Gravel Surfacing and Other Works</u> Contracts and Specifications may be obtained at the Office of the Chief Construction Engineer, Parliament Buildings, Edmonton, Alberta, the Office of the District Engineer, Old Court House Building, Calgary, Alberta, and the Office of the District Engineer, Treasury Building, Lethbridge, Alberta, and will be available only to individuals domiciled, registered, and operating in the Province of Alberta, or to partnerships or corporations registered and operating in and who have established a fixed place of business in the Province of Alberta. A deposit of Twenty-Five Dollars (\$25.00) will be required for each copy of the Contract and Specifications taken. Each Bid must be accompanied by a marked cheque or bond equal to 10% of the tender. Tenders will be opened in Public. Contractors submitting bids are invited to attend. The lowest or any tender not necessarily accepted.	17 26 35 44
62	 A. FINNER, DEPUTY MINISTER OF HIGHWAYS	53 62
110	APPENDIX III	71 80
130		89
152		98
166		107
180		116

Please check copy carefully before sending to Purchasing Agency

ADVERTISING "DUMMY" SHEET

Prepare or Copy in the Space on Your Typewriter, Single Space Only

2 Departmental Copy ⁹ FOR LEGAL ADVERTISEMENTS ONLY

GOVERNMENT OF
THE PROVINCE OF ALBERTA

Prepare Your Copy in Triplicate.

Sheet No. 1—To be retained for your Departmental File.

sheets Nos. 2 and 3—To be attached with requisition Form P1 and forwarded to the Purchasing Agency.

This Advertisement to Appear in:

Edmonton Journal
Calgary Albertan
Northwest Herald
Edmonton, Alberta.
Calgary, Alberta.
Lethbridge, Alberta.

and to be inserted as follows:

Mon.	27th	day of	April	19 53
Tues.	28th	day of	April	19 53
Wed.	29th	day of	April	19 53
Thurs.	30th	day of	April	19 53
Fri.	1st	day of	May	19 53
Sat.	2nd	day of	May	19 53



Authorized by

REMARKS:

NOTE

Agate—12 Lines Typewriter—1 Inch
B Point—9 Lines Typewriter—1 Inch.

The Director of Purchases will not accept invoices for approval for payment of any advertising that has been arranged for by Departments direct with newspapers or publishers.

AGATE	 PROVINCE OF ALBERTA Department of Highways	A POINT
26	(1) <u>Highway 9, East of Estevan to</u> <u>Priddy Lake.</u> <u>Mile 30.25 to Mile 67.65.</u> <u>Asphaltic Hot Plant Mix Surface Course.</u>	17
40	(2) <u>Highway 13, Killeen to Hardisty</u> <u>Mile 62.00 to Mile 95.10.</u> <u>Grading, Gravel Surfacing and other work.</u>	26
54	(3) <u>Highway 16, Styal to Chip Lake</u> <u>Mile 79.20 to Mile 85.75.</u> <u>Stabilized Gravel Base Course.</u>	26
68	(4) <u>Highway 16, Killeen to East of Lacombe</u> <u>Mile 0.00 to Mile 23.75.</u> <u>Grading and other work.</u>	35
82	Contracts and specifications may be obtained at the Office of the Chief Construction Engineer, Parliament Buildings, Edmonton, Alberta, the Office of the District Engineer, Old Court House Building, Calgary, Alberta, and the Office of the District Engineer, Treasury Building, Lethbridge, Alberta, and will be available only to Contractors registered and operating in the Province of Alberta. A deposit of Twenty-Five Dollars (\$25.00) will be required for each copy of the Contract and Specifications taken. Each bid must be accompanied by a marked cheque or bond equal to 10% of the tender. The lowest or any tender not necessarily accepted.	44
96	 A. Frame DEPUTY MINISTER OF HIGHWAYS	53
110	APPENDIX IV	62
124		71
138		80
152		89
166		98
180		107
194		116

Please check copy carefully before sending to Purchasing Agency

APPENDIX V.

CONTRACTS AWARDED IN WHOLE
OR IN PART ON AUTHORITY OF
ORDER-IN-COUNCIL

YEAR	CONTRACT NUMBER	AMOUNT	DESCRIPTION	CONTRACTOR	ORDER-IN COUNCIL
1951	658/51	\$ 14,846.20	Huxley -- Lousana	Gallelli & Sons Co.Ltd.	1174/51 (1)
1952	674/52	108,965.00	Lundbreck -- Bellevue	General Construction	164/52 (2)
1953					
1954	786/54	238,504.00	S. of Midnapore--De Winton	Ludwig Construction	657/54 (2)
	798/54	401,136.16	Redwater -- Waskateneau	Hislop Construction	743/54 (2)
1955	865/55	559,657.92	Jasper Place -- Carvel Corner	Mannix-O'Sullivan Paving Co. Ltd.	768/55 (3)

TOTAL NUMBER CONTRACTS COVERED BY ORDERS-IN-COUNCIL 5.

- (1) Low bidder submitted improper tender; awarded to second lowest tender.
- (2) Low bidder not qualified because of insufficient equipment. Awarded to second lowest bidder.
- (3) Low bidder unable to start work in time because of another uncompleted contract. Awarded to second lowest bidder.

The above information has been compiled from Exhibits 14, 15, 17 and 18.

CONTRACTS AWARDED IN WHOLE OR IN
PART BY EXTENSION

APPENDIX VI.

YEAR	CONTRACT NUMBER	AMOUNT	DESCRIPTION	CONTRACTOR
1941	NIL			
1942	NIL			
1943	397/43	\$ 1,930.00 20,358.00	Wainwright -- East Further Extension to Chauvin Corner	Thomas Kirwan Thomas Kirwan
1944	NIL			
1945	NIL			
1946	NIL			
1947	NIL			
1948	NIL			
1949	563/49 545/49 546/49	33,910.50 22,691.50 10,264.45	Stettler -- Botha Altario -- Compeer Beaver -- Ft. Kent	Fred Mannix & Co. Ltd. J. E. Layden Field & Davis
1950	592/50	57,375.00	E. Peace River--W. of Springborn	Mannix-O'Sullivan Paving Co. Ltd.
1951	631/51 638/51 643/51-1 643/51-2 645/51 647/51 649/51 651/51 654/51 660/51-1 660/51-2	126,656.45 36,390.03 142,402.50 211,557.50 36,244.64 234,490.50 42,697.50 40,619.00 46,642.25 106,757.24 4,750.00	Magrath--N. of Spring Coulee Jarvie -- Flatbush House R.--Little Smoky Little Smoky-- 10 m. South Westlock--S. of Jarvie N. 16th Base Line--Two Creeks W. of Spirit R. Rock Creek Slide Derwent-Junction Hwy. 41 6 Meridian--S. of Whitelaw S. of Whitelaw--Bluesky	National Paving Co. Ltd. Mallett Contracting Co. Mannix Ltd. Mannix Ltd. Standard Gravel Western Construction Park Brothers Ltd. Mannix Ltd. F. R. Gibbs Mannix Ltd. Mannix Ltd. Mannix Ltd.

YEAR	CONTRACT NUMBER	AMOUNT	DESCRIPTION	CONTRACTOR
1952	690/52	\$138,525.00	Calgary-Airport--Forrest Lawn	Mannix Ltd. (1)
1953	721/53	57,341.50	Stanmore East	Evans Construction Co. (1)
	726/53	138,274.80	Hardisty Revision	F.W. Lamb & Sons Ltd. (1)
	728/53	62,862.00	S. of Fairview West	North American Roadbuilders (1)
	732/53	52,800.00	The Whitemud Flats	Park Brothers Ltd. (1)
	733/53	112,902.19	Obed Revision	New West Construction Co.Ltd. (1)
	752/53	38,331.61	West of Clyde Corner	Chennells Construction Co. (1)
1954	NIL			
1955	853/55	47,759.32	Extension through Cloverleaf T.C.H.	W.C. Wells Construction Co. (1)
TOTAL NUMBER CONTRACTS EXTENDED				24.

(1) Contractor not indebted directly or indirectly to Treasury Branches.

The above information has been compiled from Exhibits 14-18, 40-45, 48, 49, 53, 57, 59-66, 71-74.

EXPLANATIONS RESPECTING
EXTENSION CONTRACTS

1943	397/43 (Exhibit 66)	Small amount of work, extended as work progressed.
1949	545/49 (Exhibit 72)	Small section left undone, thought too small to invite new bids. Same unit prices.
	546/49 (Exhibit 73)	As unit prices considered below usual, felt good economy.
	563/49 (Exhibit 71)	Thought too late in season to advertise additional work. Same unit prices as on original contract.
1950	592/50 (Exhibit 74)	Same gravel deposit common to two contracts. Extension arranged for crushing and stockpiling.
1951	631/51 (Exhibit 40)	Adverse weather prevented getting road in condition for paving. To offset loss of work gave grading extension contract at same unit prices.
	638/51 (Exhibit 41)	To take advantage of unit prices bid on a larger quantity of work.
	643/51-1 (Exhibit 42)	To eliminate delay and to provide access for bridge crews.
	643/51-2 (Exhibit 42)	Considered expedient due to relative inaccessibility of the area and fact contractor on the spot. Same unit prices.
	645/51 (Exhibit 43)	To take advantage of low unit crushing price and to avoid delay.
	647/51 (Exhibit 44)	Bridges not complete and access poor. With original contractor on job decided most economical to grant extension. Unit prices were low.
	649/51 (Exhibit 45)	Bids at unit prices on large contract. Thought too big a job to do so got contractor to do less at same prices. Then when got more work done than expected--extended it.
	651/51 (Exhibit 53)	Small job rendering it uneconomical for other contractors to come in.

- 1951 654/51
(Exhibit 48) Job carried over to 1952. As price considered reasonable decided to complete connection from Derwent to Highway 41.
- 660/51-1
(Exhibit 49) Contractor finished early. Decided to extend roadway 5 miles at same price.
- 660/51-2
(Exhibit 49) Clearing of right of way at same unit price as original contract to anticipate future work.
- 1952 690/52
(Exhibit 57) Work completed early in fall. Extension to take advantage of unit prices on main contract.
- 1953 721/53
(Exhibit 59) Completed contract early. Considered economical to continue work.
- 726/53
(Exhibit 60) Surveys had eliminated some road. Contractor on job given chance to revise the contract.
- 728/53
(Exhibit 61) Contract completed early. Considered economical to take advantage of good weather.
- 732/53
(Exhibit 62) Improved location to be worked on. Took advantage of contractor in area-- same unit prices.
- 733/53
(Exhibit 63) Delays of Board of Transport Commissioners left small section open. While contractor in area extended contract at same unit prices to complete this section.
- 752/53
(Exhibit 64) This contractor had only equipment available for specialized work contemplated here.
- 1955 853/55
(Exhibit 65) To have base course and surfacing continuous through the Cloverleaf intersection with Trans Canada Highway, granted extension. Work too small to invite outside contractor.

The above information has been compiled from Exhibits 14-18, 40-45, 48, 49, 53, 57, 59-66, 71-74.

CONTRACTS AWARDED IN WHOLE
OR IN PART BY NEGOTIATION

YEAR	CONTRACT NUMBER	AMOUNT	DESCRIPTION	CONTRACTOR
1941	NIL			
1942	NIL			
1943	397/43	\$ 5,635.00	Wainwright--Chauvin Corner	Thomas Kirwan
1944	NIL			
1945	NIL			
1946	NIL			
1947	451/47	12,150.00	Penhold--Lousans	J. E. Layden
1948	504/48	707,804.82	Morinville--Clyde Corner	O'Sullivan Construction Co.
1949	562/49	151,976.50	Edmonton--Ft. Saskatchewan	Mannix-O'Sullivan Paving Co. Ltd.
1950	NIL			
1951	651/51 653/51	182,219.70 9,498.16	Coleman Revision Chauvin Corner to Saskat- chewan Boundary	Mannix Ltd.
	660/51 661/51	500,598.06 416,448.27	Berwyn --6th Mer. Stony Creek-Borradaile	Percy Willoughby Mannix Ltd. Mannix-O'Sullivan Paving Co. Ltd.
	662/51	103,912.50	Grande Prairie--Wembley	Mannix-O'Sullivan Paving Co. Ltd.
	667/51 672/51 673/51	112,900.00 138,700.00 144,000.00	Michichi Creek Isogen Lake--Smoky R. 16 Base Line--S. of Isogen Lake	New West Construction Mannix Ltd. Western Construction

APPENDIX VIII.

- 2 -

YEAR	CONTRACT NUMBER	AMOUNT	DESCRIPTION	CONTRACTOR
1952	704/52	\$ 19,612.60	Hwy. 1 -- Elkwater	H. Gallelli & Sons (1)
1953	748/53	714,725.00	S. of Little Smoky to Isogen Lake	Mannix Ltd. (1)
	752/53	40,189.33	Clyde Corner-- 4 Miles W.	Chennells Construction (1)
1954	NIL			
1955	NIL			

TOTAL NUMBER CONTRACTS NEGOTIATED 15.

(1) Contractor not indebted to Treasury Branches.

The above information has been compiled from Exhibits 14-18, 42, 47, 49, 50, 53, 55, 56, 58, 64, 66-68, 70, 75.

EXPLANATIONS RESPECTING
NEGOTIATED CONTRACTS

1943	397/43 (Exhibit 66)	Small amount of work. Thought fairer to small local contractors to negotiate.
1947	451/47 (Exhibit 67)	Unit prices submitted were acceptable.
1948	504/48 (Exhibit 68)	Equipment available from other contract. Same unit prices. (Discussed at length in our report).
1949	562/49 (Exhibit 70)	Other contractors doing paving work already committed.
1951	673/51 (Exhibit 56)	Considered economical to use equipment immediately available.
	651/51 (Exhibit 53)	Small amount of work in relation to equipment required and contractor already in the area.
	653/51 (Exhibit 47)	Small job. Expedient to use small local contractors.
	660/51 (Exhibits 49 & 50)	Road not in shape for work under Contract 635/51. To be fair Department negotiated new contract with same contractor at same unit prices. See also Appendices VI and VII respecting extensions to same contract).
	661/51 (Exhibit 50)	Department's own equipment found unable to complete whole stretch. Contractor's unit prices conformed with current prices.
	662/51 (Exhibit 75)	To replace cancelled contract. Contractor had equipment immediately available.
	667/51 (Exhibit 55)	Only one company bid after four had been invited.
	672/51 (Exhibit 42)	Lower prices for clearing obtained as equipment in area.
1952	704/52 (Exhibit 58)	No tenders received after advertising. Then invited bids and lowest bid accepted.
1953	748/53 (Exhibit 42)	Contractor revised bids that were thought to be too high and his new lower bids were accepted.
	752/53 (Exhibit 64)	Negotiated because this contractor only one with specialized equipment required for experimental construction contemplated.

The above information is compiled from Exhibits 14-18, 42, 47, 49, 50, 53, 55, 56, 58, 64, 66-68, 70, 75.

R E P O R T

of

THE ROYAL COMMISSION

Appointed under The Public Inquiries Act
Chapter 139, Revised Statutes of Alberta 1942

PART II - THE ROYAL COMMISSION

James C. Mahaffy, Esq., Q. C., - Chairman

Dr. John D. Dower, M.B.E.,.....Commissioner.

Dr. G. Harrison Villett,.....Commissioner.

Maurice L. Brown, Esq.,.....Commissioner.

John H. Galbraith, Esq.,.....Commissioner.

Edmonton, Alberta,
June 1st, 1956.

R E P O R T

of

THE ROYAL COMMISSION
appointed under The Public Inquiries Act
Chapter 139, Revised Statutes of Alberta 1942

James C. Mahaffy, Esq., Q.C.,	Chairman.
Dr. John D. Dower, M.B.E.,	Commissioner.
Dr. G. Harrison Villett,	Commissioner.
Maurice L. Brown, Esq.,	Commissioner.
John H. Galbraith, Esq.,	Commissioner.

Edmonton, Alberta,
June 1st, 1956.

R E P O R T

of

THE ROYAL COMMISSION appointed under The Public Inquiries Act Chapter 139, Revised Statutes of Alberta 1942

On the 7th day of February, 1956, at Edmonton, Alberta, a Royal Commission was issued, the terms of which are as follows:

" WHEREAS by Order in Council 1115/55 a Commission consisting of the HONOURABLE MR. JUSTICE HUGH JOHN MACDONALD, a Justice of the Supreme Court of Alberta, Trial Division, Chairman, JOHN DOWER, of the City of Edmonton, in the Province of Alberta, DR. GEORGE HARRISON VILLET, of the City of Edmonton, in the Province of Alberta, MAURICE BROWN, of the City of Calgary, in the Province of Alberta, and J. H. GALBRAITH, of the Town of Ponoka, in the Province of Alberta, was appointed pursuant to the provisions of The Public Inquiries Act, being Chapter 139 of the Revised Statutes of Alberta, 1942, in order to investigate the charges, allegations and reports contained in certain speeches, articles, editorials, newspaper reports and radio and television broadcasts and to report thereon to the Lieutenant Governor in Council; and

WHEREAS the said Commission has conducted hearings, heard evidence and completed its inquiry but has not made its findings of fact in respect of the matters set out in paragraphs (c) and (d) of the said Commission as follows:

- " (c) to investigate and report upon the facts concerning the method of calling for tenders and awarding of highway construction contracts by the Department of Highways; and in particular to investigate and report upon whether in any instance any preference has been shown in the awarding of highway construction contracts to persons, firms or corporations by reason of their being indebted to a Provincial Treasury Branch, or to persons, firms or corporations by reason of the fact that they assumed responsibility for the liabilities of persons, firms or corporations indebted to a Provincial Treasury Branch;
- (d) to investigate and report upon the facts concerning the building of a paved road by the Department of Highways from Highway 15 to the Belmont Rehabilitation Centre and the facts concerning the building and paving of a road from the Rehabilitation Centre to the Belmont Drive-in Theatre;

and

WHEREAS the HONOURABLE MR. JUSTICE HUGH JOHN MACDONALD, Chairman of the Commission, has found it necessary to resign from the said Commission by reason of ill health but has indicated that he is willing to continue to act with the other Commissioners for the purpose of making the findings of fact with respect to paragraphs (c) and (d) above; and

WHEREAS it is deemed expedient and in the public interest that the Commissioners named in Order in Council 1115/55, viz., the HONOURABLE MR. JUSTICE HUGH JOHN MACDONALD, JOHN DOWER, DR. GEORGE HARRISON VILLET, MAURICE BROWN and J. H. GALBRAITH be authorized and do report to the Lieutenant Governor in Council in respect of the matters set out in paragraphs (c) and (d) hereinbefore mentioned; and

WHEREAS it is deemed expedient and advisable to appoint JAMES C. MAHAFFY, Q.C., of the City of Calgary, in the Province of Alberta, as Chairman of the Commission in order to continue the inquiry into the other matters set forth in the said Commission;

" NOW KNOW YE that by and with the advice of Our Lieutenant Governor in Council, the HONOURABLE MR. JUSTICE HUGH JOHN MACDONALD, JOHN DOWER, DR. GEORGE HARRISON VILLET, MAURICE BROWN and J. H. GALBRAITH, the Commissioners appointed under Order in Council 1115/55, be and are hereby authorized and do report thereon to the Lieutenant Governor in Council with respect to the matters set out in paragraphs (c) and (d) hereinbefore mentioned;

FURTHER We do by these Presents nominate, constitute and appoint, pursuant to the provisions of The Public Inquiries Act, being chapter 139 of the Revised Statutes of Alberta, 1942, JAMES C. MAHAFFY, Q.C., as Chairman, and JOHN DOWER, DR. GEORGE HARRISON VILLET, MAURICE BROWN and J. H. GALBRAITH as Commissioners, to continue and conduct the said inquiry

- (a) to investigate and report upon the facts concerning the method of calling for tenders and awarding of building construction contracts by the Department of Public Works, and in particular as to whether
 - (1) the Department was justified in specifying the use of precast concrete, Ytong or cellular blocks in those cases where the use of such products was specified;
 - (2) in connection with such contracts the Department showed any preference for any materials by reason of the fact that a former Cabinet Minister or his relatives had a financial interest in the company which manufactured such materials;
- (b) to investigate and report upon the facts concerning methods used by the Department of Public Works in the buying, selling, leasing or otherwise dealing in real property and in particular to investigate and report upon the facts
 - (i) concerning the purchase, sale or leasing, or

"

- (ii) whether any Cabinet Minister or Member of the Civil Service made any personal gain from the purchase, sale or leasing of the following properties:
- (1) Provincial Building No. 2, Edmonton
 - (2) Alberta Block, Jasper Avenue West, Edmonton
 - (3) Seventeenth Avenue West Liquor Store, Calgary
 - (4) Ninth Avenue West Liquor Store, Calgary
 - (5) Proposed gaol site near Chestermere Lake
 - (6) Spy Hill gaol site near Calgary;

- (e) to investigate and report upon the facts concerning the method of exchanging mineral rights owned by the Crown for mineral rights owned by others as authorized under the provisions of section 19, paragraph (a) of The Mines and Minerals Act, being chapter 66 of The Statutes of Alberta, 1949; and in particular to investigate and report upon the facts concerning the exchange of certain mineral rights between the Honourable E. C. Manning and the Crown in the right of the Province of Alberta as evidenced by Order in Council numbered O.C. 1707/51, dated November 28th, 1951, and published in the Alberta Gazette on the 15th day of December, 1951;
- (f) to investigate and report on the facts concerning the general procedure followed by the Treasury Branches with respect to making loans and in particular the making of loans by the Treasury Branches to Members of the Legislative Assembly and whether any loss was sustained by the Treasury Branches by reason of such loans; provided that in the public interest and to protect the interest of customers of the Treasury Branches no investigation shall be made into loans made to or other dealings with the Treasury Branches by any other person;

"and to report thereon to the Lieutenant Governor in Council and to make such recommendations to the Lieutenant Governor in Council as the said Commissioners may in their discretion consider proper; and

FURTHER that the evidence already given before the Commission appointed pursuant to Order in Council 1115/55 with respect to paragraph (f) shall be deemed to be evidence given before this Commission;

AND WE DO DECLARE the said charges, allegations and reports to be matters of public concern;

AND WE DO CONFER under authority of the Act aforesaid upon Our said Commissioners, JAMES C. MAHAFFY, Q.C., JOHN DOWER, DR. GEORGE HARRISON VILLETT, MAURICE BROWN and J. H. GALBRAITH, the power of summoning witnesses before them and of requiring such witnesses to give evidence on oath, orally or in writing or on solemn affirmation (if they are persons entitled to affirm in civil matters) and to produce such documents and things as Our said Commissioners may deem requisite to the full investigation of the matters into which they are appointed to inquire; and further confer upon Our said Commissioners the same power to enforce the attendance of witnesses and to compel them to give evidence as is vested in any court of record in civil cases.

IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent, and the Great Seal of Our Province of Alberta to be hereunto affixed.

WITNESS: His Honour the Honourable JOHN JAMES BOWLEN, Lieutenant Governor of Our said Province, in Our City of Edmonton, this Seventh day of February, in the year of Our Lord, one thousand nine hundred and fifty-six, and in the Fifth year of Our Reign."

We, James C. Mahaffy, Esq., Q.C., Dr. John D. Dower, M.B.E., Dr. G. Harrison Villett, Maurice L. Brown, Esq., and John H. Galbraith, Esq., the said Commissioners, wish, at

the very outset of our report, respectfully to call attention to the first clause of the preamble which states that the members of the Commission were appointed

"in order to investigate the charges, allegations and reports contained in certain speeches, articles, editorials, newspaper reports and radio and television broadcasts and to report thereon to the Lieutenant Governor in Council."

Reference to Order in Council 1115/55 makes it clear that such charges, allegations and reports related to the conduct of the business of government in the Province of Alberta.

We wish to make it clear that we received no evidence as to the nature of such "charges, allegations and reports" as we were confined in the evidence that we admitted, to the actual terms of reference. We are pointing out that fact so that no misunderstanding may arise because we make no further reference to "charges, allegations and reports" referred to in the preamble.

On April 6th, 1956, which was some days before the conclusion of our public hearings, we requested Commission Counsel to write the following letter to Mr. Basil Dean, Publisher of the Calgary Herald:

"Dear Mr. Dean:

Re: Royal Commission Investigating Charges
of Maladministration against the Alberta
Government

As the hearing is almost complete I have been instructed by the members of the Commission to write you at this time.

According to the Order in Council creating the Commission certain charges, allegations and reports were contained in newspaper editorials and articles which would indicate to the Commission members that you may have certain information that might be helpful. The members earnestly desire that all facts relating to the subject matter of the inquiry should be placed before them.

If you know of any evidence which has not already been heard by the Commission would you please make it available to me, as Commission Counsel, without delay.

Yours very truly,

W. G. Morrow. "

At the same time, Commission Counsel forwarded letters in identical form to the publishers of the Edmonton Journal, Calgary Albertan, Lethbridge Herald and Medicine Hat News (Exhibit 293).

Also on April 6th, 1956, Commission Counsel, at our request, wrote to Mr. J. Harper Prowse as follows:

"Dear Mr. Prowse:

Re: Royal Commission Investigating Charges
of Maladministration against the Alberta
Government

As the hearing is almost complete I have been instructed by the members of the Commission to write you at this time.

According to the Order in Council creating the Commission, certain charges and allegations were contained in speeches, and radio and television broadcasts which would indicate to the Commission members that you, or your associates, may have certain information that might be helpful.

The members earnestly desire that all facts relating to the subject matter of the inquiry should be placed before them.

If you know of any evidence which has not already been heard by the Commission would you please make it available to me, as Commission Counsel, without delay.

Yours very truly,

W. G. Morrow. "

At the same time Commission Counsel forwarded letters in identical form to Mr. J. Percy Page and to Mr. Elmer E. Roper (Exhibit 294).

No replies were received from the publishers of The Albertan, Lethbridge Herald or Medicine Hat News. All other replies were filed (Exhibit 344) and read as follows:

- (a) From Mr. W. A. MacDonald, Publisher of the Edmonton Journal:

" I have yours of the 6th instant and have to advise you that I am not in possession of any evidence bearing upon matters covered by the Terms of Reference of the above mentioned Royal Commission, other than that already adduced by the Commission."

(b) From Mr. Basil Dean, Publisher of the Calgary Herald:

" Thank you for your letter of April 6. While we would be most happy to do anything we can to assist the Commission with its enquiry, I must inform you that, to the best of my knowledge, we are not in possession of any information on the subjects into which the Commission was directed to enquire beyond the facts already presented to the Commission in evidence from other sources.

I regret, therefore, that there does not seem to be anything that we could add. If you wish, you are, of course, at liberty to approach Mr. Drever and Mr. Snell, both of whom were actively engaged in reporting the election campaign last summer. It is possible that there are some points which will occur to them, although I rather doubt it."

(c) From Mr. J. Percy Page:

" It was good of you and the members of the commission to ask if I had any information which might be of help in your present undertaking.

As a matter of fact, the Conservatives held a meeting shortly before the election was held and agreed among themselves not to make accusations of any kind during the campaign -- accusations that might in any way be unsubstantiated at that time. We felt that inasmuch as the Liberals had made the original charges, it was up to them and to the government to fight their private battle.

For that reason, I have nothing to offer. One matter which we would have liked to have investigated was the government's handling of the 'Oil Tar

"Sands' deal, but we discovered that this was outside of the rather limited terms of reference.

I am leaving for Hawaii early Tuesday morning, and will be away for a month; consequently, I shall not be able to speak to you or to any of the members of the Commission at this time. May I add, however, that I have been intensely interested in your sittings, and I should like to congratulate all members upon the thoroughness and fairness of the investigation up to this point."

(d) From Mr. Elmer E. Roper:

" I have your letter of the 6th.

Any reference I have ever made to any of the matters being investigated by the Commission have been based solely on information given to the legislature at meetings of the Public Accounts committee in 1955.

I therefore have no information that is not already in the possession of the Commission."

(e) From Mr. J. Harper Prowse:

" Thank you for your letter of April 6th.

As you know, I was most anxious that the Commission should have the advantage of listening to cross-examination, as well as examination, and with this in mind, after our request that an Opposition Counsel should be appointed was rejected, the Alberta Liberal Association retained counsel for the purpose of assisting in bringing out all facts which might be relevant to the terms of the enquiry.

I note your reference to the Order in Council which mentions certain charges and allegations. To the best of my knowledge, these have never been defined, and therefore the interpretation of the terms of reference has been limited.

" Within the terms of the Commission, it seems to me that the witnesses called have given all the evidence that could reasonably be expected from them. I am not personally aware of any witnesses who could give first-hand evidence of any facts which would add to the information pertinent to the terms of reference."

The services of W. G. Morrow, Esquire, Q.C., as Commission Counsel, were placed at our disposal. We also had the assistance of W. F. Ellis, Esquire, who acted as our Secretary.

During the course of our public hearings, the following Counsel registered and appeared:

S. J. Helman, Esquire, Q.C., on behalf of the various Government Departments.

J. V. H. Milvain, Esquire, Q.C., on behalf of the Alberta Liberal Association.

Ronald Martland, Esquire, Q.C., on behalf of The Honourable E. C. Manning, Premier of Alberta.

N. D. McDermid, Esquire, Q.C., on behalf of Precast Concrete Ltd.

On or about the 5th day of March, 1956, public notices were inserted in the Edmonton Journal, Calgary Herald, The Albertan, Medicine Hat News and Lethbridge Herald, inviting all persons and organizations desirous of submitting evidence to the Commission to make their representations, or to have their Counsel appear before the Commission.

In an endeavour to bring out all facts possible, we adopted the following procedure:

- (a) Commission Counsel, W. G. Morrow, Q.C., to lead off with each witness.
- (b) S. J. Helman, Q.C., to cross-examine.
- (c) J. V. H. Milvain, Q.C., to cross-examine.
- (d) Counsel appearing on particular subjects only, to cross-examine.
- (e) From time to time the above order of examination and cross-examination to be varied to meet the convenience of Counsel.

In the course of the investigation we endeavoured to confine the examination and cross-examination of witnesses, and the introduction of evidence, to the precise terms of reference. However, we may have admitted some irrelevant material, rather than run the risk of excluding any important fact or facts.

We commenced sittings in public at the Court House, Edmonton, on February 27th, 1956, and our last such sitting was on April 20th, 1956. In that period we held sittings in public on 33 days, to hear evidence, inspect properties and hear the arguments of Counsel.

Although we did not receive the evidence on the various points of reference in the same order as those points appear in the Commission, nevertheless, we will report on the sections of the Commission, (a), (b), (e) and (f), in that order.

Public Works (a).

Paragraph (a) of the terms of reference reads as follows:

- "(a) to investigate and report upon the facts concerning the method of calling for tenders and awarding of building construction contracts by the Department of Public Works, and in particular as to whether
- (1) the Department was justified in specifying the use of precast concrete, Ytong or cellular blocks in those cases where the use of such products was specified;
 - (2) in connection with such contracts the Department showed any preference for any materials by reason of the fact that a former Cabinet Minister or his relatives had a financial interest in the company which manufactured such materials;"

The Commission heard evidence on this subject on March 5th, 7th, 8th, 9th, 13th, 14th, 15th, 16th, 19th and 20th, 1956. Argument was heard from Counsel on April 13th, 1956. On March 6th, 1956, the Members of the Commission accompanied by Counsel inspected the following buildings in Edmonton and vicinity:

Admittance Building, Oliver Mental Institute.
Polio Wing, University Hospital.
The School for the Deaf.

Research Council Building.

Highways Building.

Alberta Block.

Provincial Building No. 2.

The following witnesses gave evidence:

Mr. Arthur Arnold,
Deputy Minister of Public Works.

Mr. Ronald Clarke,
Chief Architect,
Department of Public Works.

Mr. John Frederick Hunt,
Chief Engineer,
Department of Public Works.

Dean R. M. Hardy,
Dean of the Faculty of Engineering,
University of Alberta.

Mr. Thomas Lamb,
President and General Manager
of Structural Engineering Services Ltd.

Mr. George Adam,
General Manager of Precast Concrete Ltd.

Mr. David Panar,
Associate Professor of Mechanical
Engineering, University of Alberta.

Mr. H. E. White,
Secretary-Treasurer of
Wilson Electric Supplies Ltd.

Exhibits were filed, the numbers and a brief description
of these being:

<u>Exhibit No.</u>	<u>Brief Description</u>
135	Statement concerning the method of calling for tenders and awarding of building construction contracts by the Department of Public Works.
136	Specimen Advertisement used by the Department prior to August 1955.
137	Specimen tender envelope.
138A	Specimen set of plans.
138B	Specimen set of specifications.
138C	Actual tenders.
139	Bid sheet prepared on basis of tenders, Exhibit 138C.
140	Press release re awarding of contract.
141	Letters rejecting tenders.
142	Letters accepting tenders.
143	Specimen Advertisement used by the Department after August 1st, 1955.
144	Specimen bid sheet in use after April 1st, 1955.
145	Specimen trade publications containing advertisements for tenders.
146	Statement presented by R. Clarke, Chief Architect, on the subjects of Precast Concrete, Ytong and cellular blocks.
147	A volume of photographs to illustrate use of Precast.

<u>Exhibit No.</u>	<u>Brief Description</u>
148	Letter from City Architect and Inspector of Buildings to A. V. Carlson Ltd. dated February 9th, 1955.
149	Letter from Building Appeal Board, Calgary, to Alberta Ytong Manufacturing Co. Ltd. dated March 10th, 1955.
150	Report from Alberta Ytong Manufacturing Co. Ltd. dated September 26th, 1955.
151	Letter from Chief Building Inspector, Calgary, to Alberta Ytong Manufacturing Co. Ltd. dated March 10th, 1955.
152	Paper published by Rudolph C. Valore, Jr., re Cellular Concretes Part I.
153	Valore paper, Part 2.
154	Statement presented by J. F. Hunt, Chief Engineer, on the subject of Precast concrete.
155	File of Precast Concrete Ltd. containing material test reports.
156	Department of Public Works file re Highways Building.
156A	Letter dated February 8th, 1954, from the Hon. A. J. Hooke to Arthur Arnold.
157	Contract file, Department of Public Works.
157A	Statement from Precast Concrete Ltd. re new Highways Building.
156B	Letter dated February 11th, 1954, from A. Arnold to Precast Concrete Ltd.

<u>Exhibit No.</u>	<u>Brief Description</u>
158	Group of photographs illustrating precast concrete.
159	Group of photographs showing tests of precast concrete.
160	Notes of conference held March 15th, 1954, re Highways Building.
161	Group of structural plans and details prepared by Structural Engineering Services Ltd., some dated February 20th, 1954, and some not dated.
162	Circular put out by Precast Concrete Ltd.
156C	Letter dated February 18th, 1954, from Mr. Clarke to Mr. Hunt.
156D	Letter dated February 18th, 1954, from Mr. Clarke to Mr. Arnold.
156E	Letter dated March 9th, 1954, from Mr. Clarke to Mr. Howard.
156F	Letter dated November 5th, 1954, Mr. Howard to Mr. Arnold.
156G	Letter dated May 13th, 1954, Mr. C. V. Heim to Precast Concrete Ltd.
156H	Letter dated March 9th, 1954, from Mr. Arnold to Precast Concrete Ltd.
156I	Letter dated June 23rd, 1954, from Mr. Arnold to Alex Frame, Deputy Minister of Highways.
156J	Letter dated March 24th, 1954, from D. Panar to F. E. Coe, Mechanical Superintendent.
163	Copy of Order in Council 1383/54 dated October 12th, 1954.

<u>Exhibit No.</u>	<u>Brief Description</u>
164	Recommendation for Order in Council dated October 5th, 1954.
156K	Letter dated November 2nd, 1954, from Mr. Arnold to the Hon. A. J. Hooke.
165	List of consulting firms retained by Department of Public Works.
166	Group of photographs re Highways Building.
167	Group of photographs re Highways Building.
161 A, B, C & D	Structural plans and details re Highways Building.
168	A plan re Highways Building made sometime between January and February 20th, 1954.
169 A & B	Plans of Oliver Hospital.
170	Plan of Calgary Garage.
171	Copy of letter dated April 22nd, 1954, from Precast Concrete Ltd. to Mr. Arnold.
172	Interdepartmental Commitment re Highways Building dated May 6th, 1954.
173	Copy of Order in Council 605/54 dated April 29th, 1954.
174	Letter dated September 13th, 1955, from the Architect, Edmonton School Board to Department of Public Works.
175	Cost figures re Highways Building.

<u>Exhibit No.</u>	<u>Brief Description</u>
176	Specifications for heating, ventilating and air conditioning units re Highways Building.
177	Requisition on Purchasing Agency re air conditioning units.
178 A, B, C, D & E	Tenders re air conditioning units.
179	Report, David Panar to Arthur Arnold, dated August 31st, 1954.
180	Power special report on refrigeration.
181	Carrier catalogue.
182	Collection of Serval sales literature.
183	Letter dated August 18th, 1954, G. A. Clash to G. G. Krause.
184	Letter dated August 23rd, 1954, G. G. Krause to G. A. Clash.
185	Contract and specifications for Petroleum and Natural Gas Conservation Board Building, Calgary.
186	Bid sheet re mechanical work for Petroleum and Natural Gas Conservation Board Building.
187	Letter dated March 21st, 1955, from Angus, Butler & Associates, to Mr. Arnold.
182A	Price list appearing in Exhibit 182.
188	Letter dated June 15th, 1955, from Wilson Electric Supplies Ltd. to Purchasing Agent.
189	Serval catalogue.

<u>Exhibit No.</u>	<u>Brief Description</u>
190	Call for tenders re air conditioning units dated May 17th, 1955.
191	Requisition on Purchasing Agency re air conditioning units.
192	Recapitulation of quotations.
193	Purchase Order dated July 12th, 1955, re air conditioning units.
248	Percentage of heating, cooling and ventilation cost to total building cost, in respect to several government buildings.

The evidence of the witnesses can be found at pages 1451 to 2281 of the transcript of evidence. In this report any page references will be to that transcript.

Paragraph (a) of the terms of reference requires us to investigate and report upon the facts concerning three matters, namely:

- (1) the method of calling for tenders and awarding of building construction contracts by the Department of Public Works.
- (2) whether the Department was justified in specifying the use of precast concrete, Ytong or cellular blocks in

those cases where the use of such products was specified.

- (3) in connection with such contracts, whether the Department showed any preference for any materials by reason of the fact that a former Cabinet Minister or his relatives had a financial interest in the company which manufactured such materials.

We propose to deal with each of these three matters separately.

1. Method of calling for tenders and awarding contracts.

Before dealing with the evidence, it is desirable to set out the relevant portions of the Statutes of Alberta governing the awarding of contracts. We wish to draw attention to the following:

- (a) The Public Works Department Act, Chapter 16 of the Statutes of 1942, contains:

Section 16. "The Minister shall have power to enter into any contract with any person or corporation that may be necessary or advisable in carrying out the provisions of any Act of the Legislative Assembly; but no deeds, contracts or

"writings shall hereafter be deemed to be binding on the Department, or held to be the acts of the Minister, unless signed by him or by the Deputy Minister."

Section 17. "The Minister shall invite tenders by public advertisement, or by other public notice, for the construction and repair of all public works except in cases when from the nature of the work it can be more expeditiously, and economically executed, by order or commission or by or under the direction of the officers of the Department."

Section 18.-(1) "The Minister, when any public work is being carried out by contract shall, and in other cases may, require that security be given to His Majesty for the due performance of the work within the amount and time specified for its completion."

(b) Section 17 above quoted was amended in 1945 by inserting the words "when he deems it expedient" after the word "Minister" so that Section 17 read from 1945 to 1951:

"17. The Minister when he deems it expedient shall invite tenders by public advertisement or by other public notice for the construction and repair of all public works except in cases when from the nature of the work it can be more expeditiously and economically executed by order or commission or by or under the direction of the officers of the Department."

(c) The foregoing Act was repealed by The Public Works Department Act 1951, being Chapter 73 of the

Statutes of 1951. The following sections are found in the new Act:

"11. (1) The Minister may enter into any contract with any person or corporation that may be necessary or advisable in carrying out the provisions of this Act or any other Act.

(2) No deed, contract or writing shall be deemed to be binding on the Department, or held to be the act of the Minister, unless signed by him or the Deputy Minister."

"12. (1) Where it appears practical or expedient to do so, the Minister shall invite tenders by public advertisement, or by other public notice, for the construction and repair of all public works.

(2) In any case where, in the opinion of the Minister, it is not expedient to give the work to the lowest bidder, the Minister shall report the same to and obtain the authority of the Lieutenant Governor in Council prior to rejecting the lowest tender.

(3) The construction and repair of public works may be undertaken by or under the direction of officers of the Department, or by order or commission in any case where the Minister is of the opinion that from the nature of the work it can be more expeditiously and economically executed in that manner or it is desirable or expedient to do so."

"13. (1) When a public work is being carried out by contract the Minister shall, and in other cases the Minister may, require that security be given to His Majesty for the due performance of the work within the amount and time specified for its completion."

" (2) No sum of money shall be paid to the contractor nor shall any work be commenced on any contract until the contract has been signed by all the parties named therein, nor until the required security, if any, has been given."

Mr. Arthur Arnold, Deputy Minister of Public Works, filed a written statement with the Commission (marked Exhibit 135) outlining the methods followed by the Department in calling for tenders and awarding building construction contracts. We quote that statement in full as follows:

" TENDERS, CONTRACTS, ETC.

This Department awards building construction contracts by various methods, in conformity with the Public Works Department Act.

1. The first method, and most common, is by calling for public tenders by advertisement in Alberta newspapers and Commercial Trade papers for a minimum of three days.

The advertisement contains the following information:-

- Description and location of the project.
- Address to which tenders should be sent.
- Closing time and date.
- Details as to deposits required.
- Place to obtain plans and specifications.

" I have here for your inspection a specimen advertisement as used by this Department prior to August 1955.

Tenders are submitted in a special envelope given with the plans and specifications when obtained.

I offer a specimen envelope.

The envelopes containing the tenders are not opened, but are placed under lock and key until the advertised time of opening.

Before April 1, 1955, such tenders were opened by myself in the presence of my secretary and different senior members of my staff, in consonance with the type of project. No other people were present and none were admitted. This procedure had been carried on since the formation of the Province, as far as I can ascertain.

The tenders were scrutinized by all present, and the contractor submitting the lowest tender, providing he had tendered in strict accordance with the plans and specifications, was recommended to be the successful bidder.

I offer a set of plans and specifications and the actual tenders relative thereto.

" The actual tenders were then given to my secretary who typed a bid sheet showing the names of the contractors and the actual bids, together with any recommendations made by the committee.

I hereby offer a specimen bid sheet.

The bid sheet was signed and submitted to the Minister for his signature and approval. After approval by the Minister, a Press Release was prepared by the Department of Public Works containing the names of the tenderers and the amounts of the bids, and released to the Press through the Publicity Branch of the Department of Economic Affairs. This information was also provided to various Trade Publications by the Department of Public Works.

I offer a specimen Press Release.

The cheques of the unsuccessful tenderers were then returned to them. The successful bidder was contacted and arrangements were made to have the contract signed by the contractor and the Minister.

I offer copies of correspondence showing an example of this procedure.

After April 1st, 1955, the same procedure was followed with respect to advertising and the sub-

"mission of tenders. However, the committee was enlarged to include a representative of the Provincial Auditor, and the printed bid sheet was used to record the tenders received. At the official time of tender opening the committee assembled, and the Co-Ordinator of Works and Maintenance, the Secretary-Accountant, and a representative of the Provincial Auditor, recorded separately the bids received. My secretary then typed the bids in quintuplicate and each member of the committee present was required to sign same. The bid sheet showing full details of the bids and relative information signed by members of the committee, was submitted to the Minister for his signature and approval.

I offer this new type of bid sheet.

Immediately following the approval of the Minister, a Press Release was prepared containing information as to the bids received, and released to the Press and the various Trade Publications.

Since August 4, 1955, the public has been admitted to the opening of tenders with the committee. The advertisement now used states tenders will be opened in public, contractors submitting bids are invited to attend.

" I offer for your inspection a specimen advertisement.

I may mention at this time that Chapter 73, Section 12, Paragraph 2, of the Department of Public Works Act, permits the Department to reject the lowest tender, in any case where, in the opinion of the Minister, it is not expedient to give the work to the lowest bidder. Authority to do this would have to be obtained by Order in Council. However, as far as I am aware, relative to buildings, this Department has never had occasion to recommend that this be done.

The usual reasons for disqualifying a low tender are, if the tenderer fails to meet all the requisites of bidding, both technical and financial.

However, should the low tender satisfy all bid requirements, but in the opinion of the officials of the Department be unrealistic or incompatible with the other tenders submitted, the low tenderer is advised of this, and asked to withdraw his bid. Should he refuse to withdraw his low bid and the Department officials feel that it would not be in the public interest to accept such a low bid, then a recommendation would be made on the bid sheet that the low bid be rejected and that the contract be awarded to the second lowest bid. If the Minister

"approved this recommendation an Order in Council would be obtained to authorize the disqualification of the low bid and the acceptance of the second lowest bid, but I know of no instance where this has been done.

2. The second method followed is by requesting tenders from available contractors. This is similar to what I have just outlined, but instead of placing newspaper advertisements, three or more contractors are invited to bid by letter. This procedure is usually applied to small jobs, such as plastering, painting, well digging, etc.

3. The third method is by negotiating cost plus fixed fee contracts.

On three occasions since I have been Deputy Minister, the Department has found it best to contact either a contractor or several contractors, and negotiate a fee for acting as general contractor on a project. These three occasions were the Polio and Pediatric Wing of the University Hospital, the Admission Hospital of the Provincial Mental Institute Oliver, and the Shops and Gymnasium Building at Bowden.

In view of the poliomyelitis epidemic that had reached unprecedented proportions in the Fall

"of 1953, the Minister of Public Works had been informed by the Cabinet that accommodation would have to be provided for the care, treatment and post-treatment of poliomyelitis victims. We were also advised that because of the extreme urgency it was necessary to cause construction of a wing for the accommodation of victims of attacks of poliomyelitis, the construction of which was to commence as soon as possible. It was decided that for this purpose an extension to the University Hospital would be constructed and the building would be on a cost plus basis, the Department was able to prepare the footings and foundations, and erect the steel structure, before detailed drawings were completed.

If the Department had been required to complete all detailed drawings before commencing construction, it would have entailed a delay of some eight to twelve months in the completion of the building. The schedule of construction under the method by which the contract was awarded, has been such that the building is now 80% complete, and will be completed by July, 1956, giving a total of approximately two years for design and construction, which for a building of this design is remarkably good.

" Negotiations were carried out for the award of the contract with the contractor who originally constructed the extension to the University Hospital, as it was considered expedient, having regard to the fact that this contractor had in his possession all the necessary data concerning construction problems which would arise, and would therefore be familiar with all the hazards on an extension to the existing structure, that is, the University Hospital, which, of necessity, must continue to operate on a twenty-four hour basis.

The contract was let to W. C. Wells Construction Company on a cost plus fixed fee of \$165,000.00. No other bids were procured and this contract was awarded by Order in Council No. 519/54. However, it must be pointed out that all sub-contracts were awarded on a competitive tender basis by the Department.

Re the Admission Building, Oliver.

Early in 1954 we were advised that it was deemed necessary to erect a structure to handle incoming mental patients, to establish their length of period of treatment. Drawings were prepared for the structure and foundations of the building, and in view of the urgent requirement of the building, the foundation contract was awarded by advertising for tender. In the interim period whilst founda-

"tions were being constructed, the final working drawings and details were completed for the super-structure. In view of the excellent progress made on the foundations and the efficiency of the contractor, it was deemed advisable, in order to eliminate undue delay, to extend the original contract on a cost plus basis, thus retaining the original contractor, plus his equipment, material and labour, which were already on site.

The contract was awarded to Poole Construction Company on a cost plus fixed fee of \$60,000.00 with a firm end price. The estimated cost was \$932,099.00 and this was authorized by Order in Council No. 744/54.

Re the Shops and Gymnasium, Bowden.

Considering all the circumstances involved and the type of project, that is, renovation and remodeling, negotiations were carried out with the contractor who had been awarded, on a tender basis, the contract for the erection of the Juvenile Building, adjacent to the hangar where the renovations were to be made. This was considered expedient as the contractor had material, labour, etc., immediately available.

" Burns & Dutton Construction Company was awarded the contract on a cost plus fixed fee of \$6,300.00, the contract price being \$85,000.00. The only economical way this project could be constructed was on a cost plus basis as it was a renovation of an existing building.

In this type of contract the general contractor is reimbursed for all his expenditures directly applying to the job, and this is verified by our inspection, clerical and supervisory staff, and is further checked by the Provincial Auditor's staff.

In addition the contractor receives a certain fixed fee which is to cover overhead profit, administration expenses and expenditures not at the location. This fee is negotiated and the amount depends upon the size of the job, its location, etc. This is what is known as a fixed fee. In all cases of fixed fee contracts the Department controls the sub-contractors by calling for tenders on sub-contracts.

4. The fourth method is by negotiating contracts on same basis as previous work executed by the contractor at the site.

When an emergency necessitated by a change in Government policy requires:

- "
- (1) The Department to complete an addition to a building then under construction, or recently completed; or
 - (2) Erect a building similar to one recently built on the same site; if the work already completed by the contractor, and the cost of such work is satisfactory. The Department will negotiate a contract with the same contractor for the additional work required.

Two examples of the application of this method during my period as Deputy Minister are:

- (1) Two additional dormitories at Camrose.

In this connection the first dormitory tenders were let and the contract was awarded to Burns & Dutton Construction Company on a firm contract price. Since the Department of Health urgently required two more dormitories and Burns & Dutton Construction Company were already on the site, they promised to build these at the same firm contract price which was based on Summer construction costs.

- (2) One additional Weigh Scale House on Highway 16.

In this connection Illerbrun Construction Company was awarded the contract for four Highway Weigh Scale Houses. While these four were being constructed, it

"was decided to build a fifth. Illerbrun Construction Company agreed to build this fifth Weigh Scale House at the same price as the other four.

5. The fifth method is construction by our own forces under the direction of officers of the Department. In certain locations, and under certain circumstances, it is considered most efficient to use our own staff for the erection of, or additions to, buildings.

Of course, when the Department employs its own forces, contracts are entered into with various sub-trades, such as structural work, plastering, tile and terrazzo work, etc.

When the contractor's tender has been approved by the Minister, a contract is prepared in accordance with the plans and specifications, and duly signed by the contractor and the Minister for the Crown."

Mr. Arnold explained (p. 1476) that the successful tenderer must deposit with the Department, as security for completion, either a marked cheque for 10% of the amount of the contract or Dominion or Provincial bonds equivalent to 10% of such amount.

The witness explained that while the Department has its own staff of architects, engineers, draughtsmen, etc., yet it follows a policy of calling in expert advice from time to time. For example, Mr. Sommerville of Toronto, who is an hospital expert, was consulted regarding the T.B. Sanitarium and the University Hospital (p. 1481). A list of consulting firms retained by the Department from 1950 to 1955 was filed as Exhibit 165.

Mr. Milvain, Counsel for the Alberta Liberal Association, contended "that it is not sufficient that Departmental people, for Departmental people to come before us and enunciate a series of principles which they 'always follow'. We must go a step further and find out by examination of things that have been done whether or not those principles were followed", (p. 4461). Pursuant to that line of thought, Mr. Milvain closely examined all witnesses with respect to the new Highways Building in Edmonton. Since a large part of the evidence on this portion of the reference had to do with the planning and construction of the Highways Building, we will endeavour to briefly summarize the facts in relation to it.

We should first emphasize that the planning and construction of the Highways Building was handled by the

Department in a singular manner. Of all the volume of construction work carried out by the Department, this building stands alone in the methods used to construct it. Mr. Helman, Counsel for the Department, questioned Mr. Arnold at pages 1927 and 1928 and received answers as follows:

"Q Perhaps there is one other question I would like to ask the witness: in your summary of tenders and awards, you gave us three buildings where there were cost-plus contracts?

"A Yes..

"Q And then there is this building which was done on the basis, which we have outlined in the evidence now, and all the rest of your buildings, as I understand it, have been done on straight tender basis?

"A That's right.

"Q After advertisements, so that, I just want to clear up the suggestion that this may be a regular thing; this was something that was done especially this way, this particular building?

"A That's correct."

The Highways Building was constructed by the Department, using its own labor force and supervising personnel, and by letting contracts covering certain portions of the work to independent contractors, for example, the supply and erection of the precast concrete frame, the poured in place concrete foundations, and the plastering. The supply

of air conditioning and heating units was arranged by calling for tenders for a specified type of equipment. Keeping in mind that this was the only building where construction was arranged in this manner, it is nevertheless useful to consider the evidence about it for several reasons:

- (1) Extensive use was made of precast concrete and the method of awarding the contract for its supply and erection was questioned by Counsel for the Alberta Liberal Association (p. 4468).
- (2) The purchase of air conditioning and heating equipment was also criticized and the evidence throws additional light on the methods used in calling for tenders and awarding contracts (pp. 4468-9).
- (3) The building was urgently required and the question was raised as to whether the Department was given sufficient time for proper planning and construction (pp. 4466-7).

We will deal with the problem of whether the Department was justified in using precast concrete in a later portion of this report. At this point we will direct our

attention to the method of awarding the contract to Precast Concrete Ltd. (a) for the supply and erection of the precast concrete used in the structural frame of the building, and (b) for the construction of the foundations of the building. The complete file of the Department was put in as Exhibit 156. The first document (Exhibit 156A) is a letter dated February 8th, 1954, written by The Honourable Mr. Hooke, Minister of Public Works, to Mr. Arnold, stating in part:

" It has been agreed by the Executive Council that our department should proceed with the construction of the proposed highways building, the same to be constructed of precast concrete according to plans, prices etc. as discussed between you and the officials of the department with me recently. It will be in order for you to proceed with this work at the earliest possible date and to arrange for purchase of materials, subcontracts, etc."

The proposed building had been under discussion for probably six or eight months (p. 1650). Before February 8th, 1954, the location had been decided (p. 1653), very rough sketch plans had been prepared, but no detailed specifications had been drawn (p. 1654). The sketch plans indicated the number of floors to be built, the number of wings and the general size and shape of the building (p. 1655). The Department had been instructed that the building must not exceed two stories because of its proximity to the Parliament

Building (p. 1657). Mr. Arnold, when asked why it was decided to construct the building of precast concrete, said: "A shortage of steel was one of the most important factors.....the design lended itself to precast; the availability of the material.....Pricewise it was very favourable." (p. 1654). Before making the decision to use precast concrete, inquiries had been made as to whether the material would be available and as to the approximate cost (p. 1661). This inquiry was made from one operator only, namely, Precast Concrete Ltd., (p. 1662) because, as Mr. Clarke, Chief Architect, said, there was no other company in Alberta doing precast work which could handle a job of this magnitude (p. 1944). Mr. Arnold thought that these inquiries were made at least a few days, and possibly a few weeks before February 8th, 1954 (p. 1662). Exhibit 156B is a letter dated February 11th, 1954, written by Mr. Arnold to Precast Concrete Ltd. reading as follows:

"Gentlemen:

This is to confirm our conversations to proceed with the design and construction of our proposed new Highway Department Building, which is to be located East of the Parliament Buildings.

This is also your authority to work with Public Works' Architects with regard to the structural lay-out and design with any pre-cast necessary to facilitate and proceed with the completion of the building.

" We understand the cost of this job will not exceed Four Dollars (\$4.00) per square foot for the structural frame, which will include the foundation, frame, floor slabs, and roof slab, in accordance with our drawings, and which must be erected to our satisfaction, and subject to inspection.

It is also understood we will receive all concrete tests from your testing laboratory.

A decision was made to proceed with an extra sub-basement in this proposed building, since receiving your design and price. We will negotiate with you as the work progresses on this part of the structure.

It is to be understood that all designs must be approved by our Department.

I would appreciate your efforts to expedite this matter, as it is imperative the building be completed by the Fall of 1954.

Yours very truly,

Arthur Arnold,
DEPUTY MINISTER.

Precast Concrete Limited,
Box 384,
Edmonton, Alberta.

"

On February 18th, 1954, Mr. Clarke wrote to Mr. Hunt, Chief Engineer, to arrange a survey of the site and also a soil survey (p. 1849). The quotation from Precast Concrete Ltd. was contained in an undated document filed as Exhibit 157A which was apparently delivered by a member of the Precast Concrete Ltd. staff to the Department. The first page of this document is as follows:

"We are pleased to confirm our quotation for the above building as follows:

(A) Sub-Basement: Includes excavation, back-fill, concrete and reinforcing steel in place for footings, walls and floor.

36,670 Sq. ft. @ \$4.88 per Sq. ft.

First Floor:

36,670 Sq. ft. @ \$3.965 per Sq. ft.

Second Floor:

36,670 Sq. Ft. @ \$3.965 per Sq. ft.

Third Floor:

36,670 Sq. ft. @ \$3.965 per Sq. ft.

The above prices are based on the conditions outlined below:

- (1) Arrangements made regarding disposal of excess excavation material at an hourly truck rate or on a cost plus basis.
- (2) Design of all structural elements and all drawings required by Architects to complete their details are supplied in the above price both for Precast and poured in place concrete.

- "
- (3) The supply and erection of all columns, beams, girders, joists, lintels, floor slabs and roof slabs including welding and grouting all joints as required on structural details and drawings are included in the above prices.
 - (4) The poured in place topping to be supplied and placed by others after completion of the above work.
 - (5) All inserts and openings will be supplied to suit the Architect (s) requirements for the various sub-trades involved.
 - (6) Progress payments will be made monthly on a basis of ninety (90%) of the work completed to date. The following list of units and prices shall apply to progress payments and additional work.
 - (7) For Final Payment the square footage measurement will govern and be taken to mean from out to out basement wall -- and for Precast floors from out to out of column lines."

The sub-basement was more expensive because it was constructed of concrete poured in place, and also the

price included excavation and backfill. Then on April 22nd, 1954, Precast Concrete Ltd. wrote a letter to Mr. Arnold filed as Exhibit 171, as follows:

" April 22nd, 1954.

Dear Sir:

Re: Proposed Highways Building.

We are pleased to confirm our quotation for the above noted building as follows:

- (a) SUB-BASEMENT - Includes excavation, backfill, concrete and re-inforcing steel in place for footings, walls and floor at Four Dollars and Eighty-eight Cents (\$4.88) p.s.f.
- (b) FIRST FLOOR - Includes structural frame, floor slab poured in place at Three Dollars and Ninety-six and one-half Cents (\$3.965) p.s.f.
- (c) SECOND FLOOR - Includes structural frame, floor slabs erected in place at Three Dollars and Ninety-six and one-half Cents (\$3.965) p.s.f.
- (d) THIRD FLOOR - Includes structural frame, floor slabs, roof framing and slabs, erected in place, at Three Dollars and Ninety-six and One-half Cents (\$3.965) p.s.f.

If these prices meet with your approval, we will submit a breakdown of the components to facilitate monthly progress claims.

Yours very truly,

PRECAST CONCRETE LIMITED

Per: G. Adam
MANAGER.

A. Arnold, Esq.,
Deputy Minister,
Department of Public Works,
Edmonton, Alberta.

The contract was completed by the Department letter to Precast Concrete Ltd. dated May 13th, 1954, filed as Exhibit 156G to which was attached Interdepartmental Commitment dated May 6th, 1954, filed as Exhibit 172. The contract was approved by Order in Council 605/54 dated April 29th, 1954, filed as Exhibit 173.

Precast Concrete Ltd. did not provide any performance bond on this contract. Mr. Adam, General Manager of Precast Concrete Ltd., said in his evidence (pp. 2017-8) he took the position with the Department that Precast Concrete Ltd. was only a sub-contractor on the building and should not be required to provide a bond.

The argument continued until construction was in progress, at which time he said there was sufficient holdback to protect the Government. Mr. Hunt, Chief Engineer, said there were other cases where the Department purchased structural materials without a deposit being required (p. 2068). Asked if he could remember them, the witness said (p. 2069):

"A I believe, and I could stand to be corrected on this, sir, but, I believe the job out at Oliver, there was a T.B. Hospital put up there and also the Admission Hospital was procured on that same basis, that is a unit price basis

" and there is no requirement for bond to be posted, which is considering the supplier as a supplier or as a sub-contractor. That is done in a great many other occasions in these business like plastering, I believe, and terrazzo work and so on, no bond is required, and, I believe the Polio Hospital."

Mr. Adam also testified that when he wrote the letter dated April 22nd, 1954 (Exhibit 171):

" soil surveys had been made and the allowable soil pressure had been determined to enable us to complete details of the footings and take off proper quantities, yes." (p. 2011)

Mr. Clarke, Chief Architect, stated the price paid for the structural frame was fair and reasonable (p. 1820). Dean Hardy, Dean of the Faculty of Engineering, University of Alberta, in giving his evidence said: "Certainly \$3.96 is a reasonable enough figure" (p. 1610).

The suitability of the air conditioning and heating installation in the Highways Building, the price paid for it, and the method of awarding the contract, were subjected to searching inquiry during the hearing. The principal witness was Mr. David Panar. Mr. Panar is an Associate Professor of Mechanical Engineering at the

University of Alberta, and is the Mechanical Consultant for the Government of Alberta (p. 2074). He deals mainly with heating, ventilating and air conditioning. Mr. Panar was consulted regarding the air conditioning in the Highways Building. He pointed out that there are two general types of air conditioning. One is a central system and the other is described as "package units". In the central system the air conditioning for the entire building is centralized in one large unit. With the use of package units the air conditioning is provided by a number of smaller units, each serving a specific area of the building (p. 2076). He said that to decide whether one system or the other is to be used requires a study of the size and shape of the building; cost of maintenance must be considered and availability of suitable manpower to operate a large plant compared with the relative simplicity of the operation of small package units. All other things being equal, if the building was small and compact a central system would be used, whereas if it were spread out, the use of package units might be desirable (p. 2077). Mr. Panar held discussions with the architect and the structural engineer before deciding what type of system would be used (p. 2078). The design of the building led these men to consider package units. In view of the height of the building they decided a small unit which is commercially produced would be feasible (p. 2079). Due to the layout of the building, the duct work could be constructed

in a vertical and economical manner. By the use of the package units heating could be provided as well as cooling and no separate heating system would be required (p. 2081).

Mr. Panar described the difference between reciprocating and absorption units and the advantages of using absorption units where surplus steam was available. He ascertained that surplus steam was available from the Government power plant twelve months of the year (Exhibit 156J and p. 2087). By using an absorption system he felt that the Government would save in maintenance costs because the machines have no moving parts and the system could operate with waste steam, thus further reducing costs. A decision was made to use the package type of absorption unit. Specifications were prepared and forwarded to the Government Purchasing Agency (p. 2088). A copy of the specifications (Exhibit 176) was filed and explained to us by Mr. Panar. There was one particular firm in the City of Edmonton, namely, J. O. Prefontaine, which handled the Servel unit which would meet the specifications. But Mr. Panar felt that the order was of sufficient size that perhaps the dealers in the Williams Airomatic Unit and also the Carrier absorption unit would tender. The intention was to make the specifications as wide as possible and still fit the Government's needs (p. 2100). Tenders were received from

suppliers of reciprocating units and from J. O. Prefontaine. The only bid which met the specifications was from Prefontaine. The Purchasing Agent sent all the bids to the Deputy Minister, and as a result, a conference of engineers was held, attended by Mr. Panar (p. 2107). Mr. Panar says at p. 2109:

"Just before I read the report, while only one met specifications in view of the fact that we only got one tender for the absorption type and we had four others for the reciprocating, we felt that perhaps we should consider them all again. It placed us in a rather awkward situation where we got one tender, the highest tender, so therefore Mr. Arnold requested, he said, 'you examine all the tenders and let us see what your results are', and this is the result of that discussion."

Mr. Panar's report, made after further study of the whole situation, was submitted to the Deputy Minister. It is dated August 31st, 1954, and was filed as Exhibit 179. We do not think it is necessary to reproduce this report here nor to attempt a summary. Mr. Panar re-studied the whole problem in the light of the actual bids received and, because of the long range economics as above outlined, he recommended that the Serval Absorption units be purchased and installed.

Following Mr. Panar's recommendation, which was adopted by the Department, an Order in Council Number 1383/54 dated October 12th, 1954, was passed authorizing the purchase of the absorption equipment from Prefontaine. It was filed as Exhibit 163.

Mr. Panar admitted to Mr. Milvain that he was surprised, in fact "flabbergasted" by the difference between the low bid for reciprocating equipment and the high bid for absorption equipment (p. 2164). Mr. Milvain produced to the witness as Exhibit 182A a Serval price list furnished by Wilson Electric Supplies Limited, showing prices much lower than those quoted by Prefontaine in his bid, but it was later made clear that the prices shown on this exhibit were distributor's prices to the installing contractor and that the contractor was entitled to add his profit and installation charges. Mr. White, Secretary-Treasurer of Wilson Electric Supplies Limited, Calgary, said (p. 2252) that the contractor might add as much as 30% to the prices shown on the exhibit. Wilson Electric Supplies Limited, as territorial distributors of Serval, declined to quote in competition with its Edmonton dealer, Prefontaine (pp. 2181-2). Subsequently, when additional units were required for the centre wing added to the Highways Building, the Government Purchasing Agent wrote to the Serval Company in New York complaining that the prices were high and the Serval reply was that the prices were fair and just in view of all the circumstances (p. 2195).

At the request of the Commission, Exhibit 248 was prepared and filed showing percentage cost of air conditioning and heating in relation to total building costs of this and other government buildings. Following are some of those figures:

<u>Building</u>	<u>Percentage cost of air conditioning and heating to total cost</u>
Petroleum and Natural Gas Conservation Board, Calgary	21%
Alberta Government Telephones Building, Edmonton	19%
Administration Building, Edmonton (partial conditioning only)	13.5%
Highways Building, Edmonton (based on estimated completion cost of \$2,550,000.00)	15%

Mr. Panar stated (pp. 2174-5):

"I might state that I had a discussion with Mr. Prefontaine after this contract and felt, and told him that he was rather fortunate in this case because everything was in his favor, that is waste steam and layout of the building, but unless he, his price came down within more competitive range that I don't think he could just get in on other jobs because as I say he was, everything was in the favor of the absorption unit."

Concerning the question raised as to whether the Department was given sufficient time for proper planning and

construction, we make the following observations from the evidence. In some cases the Department of the Government which required a building came to the Department of Public Works for sketches and sometimes for estimates. In other cases, the Cabinet made a decision to build and that problem came down the line to the Department (p. 1639). Then, said Mr. Arnold, "we all get together in the architectural branch and the engineering and we have a few set-tos on what type of construction we would consider suitable" (p. 1639). Public Works and the Department to be served worked closely together, although they usually did have many differences of opinion on the subject (p. 1941). Mr. Arnold said, "We get sketch plans out and we work with whatever Department there is. They give us their ideas. We shuffle them around and we finally get sketch plans complete and they are then approved by the Minister of that Department. We proceed and get complete detailed plans out then they are sent back to Mr. Clarke who signs the plans and I sign them and my Minister signs them and then they are allowed to go out for tenders.....".

When Mr. Arnold was being questioned by Mr. Milvain concerning the need of space by the Department of Highways, the following questions and answers appear at pp. 1860-61:

"Q And those are the sort of things that people observe, and if they are wise, they plan for the future?

"A I can't get anybody to plan for the future, sir.

"Q That's your difficulty in operating your department?

"A It's a big difficulty. When I first came to this department, we bought buildings and we thought we had enough space then, and every year it gets worse. They form new departments, and the first thing they come and they ask us for space. It's very difficult to try to get anybody to sit down and plan. I explained that to you in all our buildings, you went through them, it's a difficult situation.

"Q So that then, I take it that at the bottom of a great deal of the troubles and difficulties you have in your Department of Public Works, is that you can't get the higher-ups to plan?

"A You are going to get me fired, aren't you? That's what you are leading up to.

"Q Isn't that about what we have come to, not of firing you, but to that conclusion? No, on the contrary, I think they shouldn't fire you because if this is a serious conclusion that you have reached, it's one that should be thought of very carefully?

"A I think a lot more consideration should be given to it, sir, and I have made that, I have stated my case several times. Our own department is the same, we need space now, but every department, they just keep pushing on, pushing on and adding on, and all of a sudden we got to find them space.

"Q And when you have to embark on any kind of a project under time pressure, it makes it that much more difficult to handle, doesn't it?

"A Time has been of big essence in all our jobs. They are all putting the pressure on us to get them done, also, Mr. Milvain, I hope you will appreciate this point: that in this country it's difficult to get construction done; we have approximately five months of good construction weather. that is one of our biggest difficulties in our department or connected with anybody."

Mr. Arnold said that in the usual case complete plans and specifications are prepared before calling for tenders, and agreed that this enables contractors to have as complete knowledge of the project as possible before bidding (p. 1637).

Following is an excerpt from the evidence of Dean Hardy (pp. 1605-6):

"Q Well, I suppose, Dean Hardy, that in cases where contractors are invited to tender on the job by an advertisement or even if they are picked out, a number of them, and asked to tender, and you give them plans and specifications, that the purpose of the plans and specifications is to give the contractor a sound basis upon which to bid?

"A That's right, he is supposed to be able to figure out the cost of the building from the plans and specifications.

"Q And the more complete the plans and specifications are, the more realistic bid he can make?

"A That is correct.

"Q And if there are shortcomings in the plans and specifications the contractor will have to take into consideration a safety margin in bidding?

"A That is correct.

"Q And the less complete they are the higher the safety margin he has got to use?

"A Well, of course, there are two ways of looking at that too. You see, he might decide that he will gamble, you see, and if the specifications are not complete it leaves an opening for him to get extras, you see; and so the essential, essentially it is the same proposition, I mean to say it is not in the best interests of the owner not to have a good set of plans and specifications, you see."

In connection with the contract for erection of precast concrete in the Highways Building, Dean Hardy said (pp. 1620-21):

"Q MR. HELMAN: Dealing with the problem of the structural framework that was bid on by Precast Concrete Limited for that building, I am informed that there was a sketch plan available before the price was finally settled; now, wouldn't that be sufficient for the price to be arrived at within limits as to what the structural framework was going to cost?

"A Well, as I understand the situation, and this is from the discussion that has been going on here, is that in that particular building, that the Government negotiated a price for a finished structural frame or something of that order.

"Q That's right.

"A And so that you, under those circumstances you would not expect a person who was going to build that to come along with a complete set of plans and specifications any more than when you buy a car you don't get the complete

" plans and specifications, you get a pretty picture, and you buy the car on that basis. Now, they were literally buying a manufactured product, you see, and so it was not, it is quite a different thing to say there is no plans and specifications under those circumstances than to say that if you are going to call for bids on a building that you need a complete set of plans and specifications.

"Q So that there was, there is nothing that can really be criticized about arriving at a price where you knew generally the type of building from a sketch plan and that the structural framework was going to be completely supplied?

"A All that the Government need to satisfy themselves that they were going, what they were going to get was going to be satisfactory for their purposes, and that it was going, that they could form some sort of an opinion on its relative economy as compared to some other way that they could build the building, they should have had enough information for that."

Mr. Clarke, the Chief Architect, examined by Mr. Helman at pp. 1814-15 said:

"Q Mr. Clarke, I wanted to pass away from the hypothetical plane that Mr. Milvain was dealing with and just come down to a few problems regarding the Highway Building itself. In the first place, I understand, and you will correct me if I am wrong about this, the building which was ultimately constructed or required, shall I say in a hurry, it was required to be finished rapidly?

"A That is correct, sir.

"Q And with those instructions it necessarily limited you to the materials that were available fairly rapidly?

"A That is correct.

"Q And as I understand it at that time there was, amongst other factors, a shortage of steel?

"A Yes.

"Q Or rather should I say, a limitation at the time within which it would be supplied?

"A That would be more correct, sir.

"Q And when the price was first discussed relative to the proposed Highways Building, with the Precast people, was there in existence at that time sufficient information to arrive at a price?

"A In my opinion and within my knowledge of the precast concrete industry, yes.

"Q And were there some sketch drawings already created at that time to show the general outside form of the building and its contours generally?

"A Yes, there were some very rough sketches indicating the general area of the building, the general shape of the building and the form of the building."

Mr. Milvain referred the witness to the above answers and at page 1940 we find:

"QI take that to mean that when the building was instructed in February 1954, it was then felt by the powers-that-be that there was a quick and essential need for it.

"A Yes, sir.

"Q I take it, too, that in reference to it you mean that when an architect or an engineer or both together approach a project and one of the conditions is that it must be done in a hurry, that that imposes difficulties on both the architect and the engineer.

"A That is correct.

"Q And that therefore when it is feasible at all that it is not wise practice to hurry these ventures?

"A No."

On the first section of this portion of the reference "concerning the method of calling for tenders and awarding of building construction contracts", we wish to make the following comments:

(a) The evidence discloses that the majority of government buildings are constructed by contractors who have been awarded contracts after the Department has called for public tenders based on prepared plans and specifications. We approve of that procedure and recommend that it be used whenever possible.

(b) Mr. Milvain suggested that in calling for tenders the English system of preparing a quantitative survey or bill of materials should also be used. There seems to be a good deal of merit in this system, but it is not in use on the North American continent and for that reason alone we

are not prepared to recommend it. Perhaps this is something to which the Department could devote further study and consideration.

(c) We have concluded from the evidence of Dean Hardy and of Mr. Clarke, Chief Architect, as above quoted, that sufficient preliminary planning was done on the Highways Building to justify the negotiation of a contract with Precast Concrete Ltd. for the construction of the foundation and the structural frame of the building.

(d) We have concluded that Precast Concrete Ltd. was not in the position of a sub-contractor and we therefore think that a performance bond should have been taken from that company in compliance with Section 13 of The Public Works Department Act 1951. We recommend that such be done in similar cases in the future.

(e) After careful consideration of the evidence regarding the air conditioning and heating installation, we find no reason to quarrel with the decisions arrived at by the Department on the advice of Mr. David Panar. Mr. Panar's reasons for his recommendations appear to us to be honest, logical and sound. There is nothing to suggest that his professional opinion on that problem was arrived at for any other reason than to serve the best interests of the Government.

(f) We strongly recommend that future government building requirements be periodically reviewed and that the actual building projects be planned as far ahead as is humanly possible. Such projects should be submitted to the Department of Public Works in ample time to permit (a) of adequate study and planning, (b) acquisition of suitable sites, (c) the obtaining of outside technical advice where necessary, (d) of adequate preparation of detailed plans and specifications prior to the calling of any tenders, and (e) sufficient time between the advertising and the closing of tenders.

2. Precast concrete, Ytong or cellular blocks.

(a) Precast concrete.

Mr. Clarke, Chief Architect, defined precast concrete as: "Precast concrete is a technique of reinforced concrete, whereby structural and load supporting members of a building (i.e. beams, columns and floors) are prefabricated in a plant, or on the site, with the repetitious use of standardized moulds, the finished product being assembled and joined together to form a structural frame" (p. 1505). He also stated: "After the architect has satisfied himself as to the planning, and aesthetic requirements of the problem

involved, the engineer acquaints himself with the plan, elevation and function of the building, and then after considering all of the factors involved both factual and intangible, presents two or three structural systems for consideration by the architect" (p. 1503). Mr. Clarke then analyzed the various factors which go into the selection of the structure and design of the building, pointing out that the structural system selected may not appear to be the most economical, relative to other systems, but the final analysis of the completed building demonstrates it to be the most economical structure (p. 1503). He then dealt with the structural frame, and the choice of timber, steel or reinforced concrete (p. 1504). He analyzed the problems related to reinforced concrete and the costly form work which is involved (p. 1504) and the economic aspect of prestressing and precasting. He pointed out that recent developments have led to a combination of precast units and steel frame, which "utilizes the greatest advantages of both steel and reinforced concrete, depending upon the design requirements in all aspects" (p. 1505).

Mr. Hunt, Chief Engineer for the Department, filed a prepared statement on the subject of precast concrete as Exhibit 154. He described in detail the various materials which could be used for structural framework, with emphasis

on precast concrete, the subject of inquiry. He explained in detail the technique of reinforced concrete, and precast slabs for floor and roof systems (pp. 1582-3) and the advantages of precast floor units over reinforced concrete with regard to fire resistance, sound insulation and durability. He said that the manufacture of precast is not a patented process and anyone can use it. Precast concrete has stood up to his expectations but there is no building product which does not have some "headaches", such as cracks due to foundation conditions or speed of erection or shrinkage of materials.

Dean Hardy, the Dean of the Faculty of Engineering, University of Alberta, who has had much experience in structural work, gave evidence. He had listened to all of Mr. Clarke's evidence and a considerable portion of Mr. Hunt's evidence, and had examined their briefs filed as exhibits. In his opinion, they made a proper investigation of new materials coming on the market (p. 1595). They obtained the best information available to them. They studied the materials, and their characteristics, and "have come up with an answer just the way it should be done", (pp. 1595 & 1609).

We were much impressed by the forthright manner in which Dean Hardy and Messrs. Clarke and Hunt gave their

evidence on this subject. In our opinion the Department was justified in specifying the use of precast concrete in those cases where the use of such product was specified.

(b) Ytong and cellular blocks.

We received a very complete brief on the use of Ytong and cellular blocks from Mr. Clarke, Chief Architect, filed as Exhibit 146. He says there are four main groups, namely:

- (1) Lightweight aggregate concrete;
- (2) Chemically aerated concrete;
- (3) Concrete aerated with foam or gases;
- (4) No-fines concrete.

Cellular blocks fall into the first category and Ytong falls into the second category. Cellular block is manufactured from Portland cement concrete while Ytong has no Portland cement content.

Mr. Clarke described the manufacture of Ytong as follows:

" Ytong is one of a group of similar products such as Siporex, which is manufactured in Eastern Canada, Cellocrete, etc., and is manufactured from

"Autoclaved Lime and Silica rich Shale.

In this instance Silica rich Shale is recovered from a suitable deposit West of Calgary, Alberta, and unslaked lime from Kananaskis, Alberta.

They are both ground to the necessary fineness and intimately mixed with water to form a shale lime slurry. Aluminum powder and various chemicals are added and the slurry is then poured into moulds where it rises and presets. After the necessary air curing is completed the moulds are cut into required sizes and conveyed to autoclaves for steam curing treatment.

The resultant product is a unit of uniform cellular structure, which, by varying the proportions of the raw material, ranges in density from 25 lbs. per cu. ft. to 42 lbs. per cu. ft. in its dry state."

The witness described the construction of walls in a modern building and pointed out that the main considerations in the selection of a backing material are:

- (1) Structural stability.
- (2) Fire resistant qualities.
- (3) Weight.
- (4) Sound insulation value.

(5) Heat insulation value.

(6) Cost.

He said that the cost of any one material is a relative factor to be taken into consideration with all other factors in the building as a whole, and what can often appear to be the more expensive in the first instance, can, after total consideration, be the least expensive. Using the above listed considerations, Mr. Clarke then gave comparative figures for clay tile, concrete block, lightweight concrete block and Ytong. He said all these products were roughly comparable in respect to structural stability, fire resistant qualities and weight. Ytong had a much higher rating for heat insulation value and sound insulation value but its cost was also higher. Mr. Clarke said that in order to bring the insulation qualities of other products into line with Ytong it would be necessary to add insulation, such as fiberglass, which addition brings the cost of the wall to a figure higher than the cost of Ytong. The costs per square foot of wall (excluding the common factors such as plaster) estimated by the witness are:

Clay tile.....	\$1.06
Lightweight block.....	\$1.04
Ytong.....	\$.90

(For technical information see Exhibit 146).

Mr. Clarke also stated:

" In addition to this economy there are certain intangible considerations which we have not been able to assess in dollars and cents, such as the ease of workability, the reduced breakage in handling compared to clay tile, and it can be readily supplied in any desired dimension.

In modern building construction, considerable electrical conduit, service pipes, etc., are required to be concealed within the confines of the wall, this necessitates breaking into the cells of clay tile and of the block and consequently repairing these breakages or using additional material in forming pipe spaces.

As will be demonstrated the Ytong can be readily grooved to any desired depth and usually the ordinary plaster finish is sufficient. It can also be sawn, drilled and nailed. How much this reflects on the reduced cost of the building we have not been able to assess accurately at this date."

The witness listed the government buildings in which some use was made of Ytong and explained in each case the reasons for such use. The buildings were: Provincial

Auditoriums, (Calgary and Edmonton), Research Building, Treasury Branch Building, School for the Deaf, Polio Hospital and Petroleum and Natural Gas Conservation Building, Calgary. He also submitted a list of non-government buildings in which Ytong had been used. The buildings were: Mayfair Hotel, Edmonton; Garage Building for Haddow & Maugham, Edmonton; Palm Dairies, Edmonton; Palm Dairies, Tofield; Edmonton Public School Board Office; Federal Government Building, Saskatoon. He states in his evidence:

" Therefore, I have not been discussing a material or materials that are new or untried, conversely, I have described products that have been manufactured for many years and used extensively in the construction industry to the point where they are now obtaining universal acceptance, and, in conclusion, it is my opinion that the use of these materials has been completely justified in all respects and has contributed to the economy both immediate and future of any project in which it has, or may be used."

Dean Hardy, as previously mentioned, said that he had listened to Mr. Clarke's evidence and had examined his brief filed as Exhibit 146. In his opinion, Mr. Clarke had made a proper investigation of this material (p. 1595) and obtained the best information available to him. Dean Hardy said Mr. Clarke studied the material and its characteristics and has "come up with an answer just the way it

should be done" (pp. 1595 & 1609). The witness also testified that, as far as he knows, Ytong has given quite satisfactory service (p. 1601).

We were impressed by the evidence of Mr. Clarke on the subject of Ytong and cellular blocks, and by the corroboration which he received from Dean Hardy. In our opinion, the Department was justified in specifying the use of Ytong and cellular blocks in those cases where the use of such products was specified.

Mr. Arnold in his evidence (pp.1485-6) stated that it is the policy of the Department to send its men to various places in the United States and Canada "to keep ahead of anything that is coming new -- even in buildings, or design, or type of buildings". Mr. Arnold and the Honourable Mr. Hooke, Minister of Public Works went to Sweden in 1954 to investigate Ytong, to see where the product was made "and where it had been used for years, that was what we were more interested in". Further he says:

"A. There is lots of manufacturers lots of times will come and ask us to let one of our men go to see an installation in some other part of the country, just recently they offered to take pretty near all of our staff to Vancouver to see an installation of a type of equipment in a building.

"Q And, do they finance the trip?

"A Yes, we didn't let them finance this one, we didn't let them go, because for one thing we were too busy, and for another we didn't have the time.

"Q But, if you are sufficiently interested in the product the manufacturer will provide the train fare, or the airplane fare?

"A Yes.

"Q For instance, this trip to Sweden, was it provided by the manufacturer?

"A Yes, they took both the Minister and myself, and they paid the plane fare to Sweden.

"Q Yes?

"A For both of us.

"Q Which Minister was that?

"A Mr. Hooke.

"Q Yes?

"A And, they also, we paid our own out of pocket expenses, we had a chance to visit auditoriums, that was why it was done."

While we wish to commend the Department upon its policy of sending representatives to other places, whether near or far, for the purpose of studying new materials and the latest methods of construction, we strongly recommend that in all cases the full and adequate cost of such trips should be borne by the Department. We think it is unwise to accept assistance of this nature from those who are doing

business, or are hopeful of doing business, with the Department.

3. Whether the Department showed any preference for any materials by reason of the fact that a former Cabinet Minister or his relatives had a financial interest in the company which manufactured such materials.

The only evidence before us indicating that a former Cabinet Minister or his relatives held an interest in any such company was that Mr. N. E. Tanner and/or his relatives held an interest in Alberta Ytong Company Limited. Every witness on this branch of our investigation took his oath that no such preference had been shown and we are satisfied they were telling the truth. There is no evidence to suggest that the Department showed any preference for any materials by reason of the fact that a former Cabinet Minister or his relatives had a financial interest in the company which manufactured such materials.

Public Works (b).

Paragraph (a), sub-paragraph (b) of the terms of reference reads as follows:

- "(b) to investigate and report upon the facts concerning methods used by the Department of Public Works in the buying, selling, leasing or otherwise dealing in real property and in particular to investigate and report upon the facts
- (1) concerning the purchase, sale or leasing, or
 - (ii) whether any Cabinet Minister or Member of the Civil Service made any personal gain from the purchase, sale or leasing of the following properties:
 - (1) Provincial Building No. 2, Edmonton
 - (2) Alberta Block, Jasper Avenue West, Edmonton
 - (3) Seventeenth Avenue West Liquor Store, Calgary
 - (4) Ninth Avenue West Liquor Store, Calgary
 - (5) Proposed gaol site near Chestermere Lake
 - (6) Spy Hill gaol site near Calgary."

The Commission heard evidence on this subject on March 20th, 21st, 22nd, 23rd, 26th, 27th, 28th, 29th, April 4th, 5th, 6th, 9th, 10th, and 11th. Argument was heard from Counsel on April 20th, 1956. On October 24th, 1955, Members

of the Commission accompanied by Counsel inspected the following properties in Calgary and vicinity:

Seventeenth Avenue West Liquor Store
Ninth Avenue West Liquor Store
Proposed gaol site near Chestermere Lake
Spy Hill gaol site

and on March 6th, 1956, inspected the following buildings in Edmonton:

Provincial Building No. 2
Alberta Block.

The following witnesses gave evidence:

Mr. Arthur Arnold,
Deputy Minister of Public Works.

Mr. J. McGregor Thom,
Registrar, Land Titles Office,
Edmonton.

Mr. A. D. Davis,
Calgary.

Mr. C. K. Huckvale,
Provincial Auditor.

Mr. Louis Buray,
Edmonton.

Mr. R. T. Robinson,
Calgary.

Mr. Bruce P. Farrell,
Edmonton.

Mr. Charles J. Hobeck,
Edmonton.

- Mr. Carl W. Clement, Q.C.,
Edmonton.
- Mr. K. I. Lyle,
Calgary.
- Mr. George C. Lancaster,
Calgary.
- Mr. J. C. Gorman,
Calgary.
- Mr. C. A. MacNutt,
Calgary.
- Mr. M. W. Carroll,
Calgary.
- Mr. Jack Hart,
Calgary.
- Mr. J. B. Finlayson,
Calgary.
- Mr. Harry J. Wilson, Q.C.,
Deputy Attorney General.
- Mr. Lucien Maynard, Q.C.,
Edmonton.
- Mr. Roy V. Deyell,
Calgary.
- Mr. John B. O'Connor,
Calgary.
- Mr. Macdonald Millard, Q.C.,
Calgary.
- Mr. Carman Ellis,
Calgary.
- Mr. George Stryker,
Calgary.
- Mr. H. N. Gilbert,
Calgary.
- Mr. P. H. Swanson,
Calgary.

Mr. A. L. Urch,
Calgary.

Mr. Louis Diamond,
Calgary.

Mr. R. M. Putnam,
Deputy Minister of Agriculture.

Mr. A. J. Mason,
Victoria, B.C.

Mr. Samuel Diamond,
North Vancouver, B.C.

Mr. E. M. Woolliams,
Calgary.

Mr. G. E. Irving,
Calgary.

A number of exhibits were filed, the numbers and a brief description of these being:

<u>Exhibit No.</u>	<u>Brief Description</u>
194	Statement of Mr. Arthur Arnold concerning methods used by the Department of Public Works in buying, selling, leasing, etc. real property.
195	Statement showing purchases made since 1950.
196	Statement showing sales made since 1950.
197A	Form of lease.
197B	Form of Agreement to Lease.
198	Newspaper advertisement dated February 6th, 1954.

<u>Exhibit No.</u>	<u>Brief Description</u>
199	Transfer of Land, Alberta Block, Ltd. to A. L. Urch, dated June 5th, 1952.
200	Transfer of Land, A. L. Urch to A. L. Urch and A. D. Davis, dated June 6th, 1952.
201	Transfer of Land, A. L. Urch and A. D. Davis to the Crown dated August 23rd, 1952.
202	Option to purchase agreement between Alberta Block Ltd. and A. L. Urch dated the blank day of October 1951.
203	Letter from Smith, Clement, Parlee & Whittaker to A. L. Urch dated August 20th, 1952.
204	Letter from A. L. Urch to Hon. D. B. McMillan dated August 22nd, 1952.
205	Statement of Mr. Arthur Arnold re purchase of Alberta Block.
206	Report of Mr. Arthur Arnold to Hon. A. J. Hooke dated May 29th, 1952, re Alberta Block.
206B	Report of Mr. D. Panar to Mr. Arnold dated May 28th, 1952, re Alberta Block.
206C	Report of Mr. H. A. Bogehold to Mr. Arnold dated May 28th, 1952 re Alberta Block.
206D	Report of A. R. Edinga to Mr. Arnold dated May 28th, 1952, re Alberta Block.
206E	Report of R. Proudfoot to Mr. Arnold dated May 28th, 1952, re Alberta Block.

<u>Exhibit No.</u>	<u>Brief Description</u>
207	Special Warrant No. 29/52-53 dated August 23rd, 1952, being Order in Council 1234/52.
208	Department of Public Works Voucher payment dated August 23rd, 1952.
209	Letter Home Agencies to Mr. Arnold dated May 6th, 1947.
210	Report James Hackett to Mr. Arnold dated May 16th, 1947.
211	Letter Weber Brothers Agencies to Mr. Arnold dated November 23rd, 1948.
212	Letter Weber Brothers Agencies to Mr. Arnold dated December 4th, 1948.
213	Historical Abstract re Alberta Block dated September 21st, 1955.
214	List of properties purchased by the Department of Public Works showing names of former owners.
215	Acceptance of offer signed by L. Buray and Jean Buray, not dated.
216	Transfer of Land, Buray to the Crown, dated March 18th, 1949.
217	Letter, Mr. Arnold to Farrell Agencies, dated January 8th, 1949.
218	Mr. Arnold's statement re purchase of Provincial Building No. 2.
219	Advertisement in Edmonton Journal, February 6th, 1954, re offer to sell buildings.

<u>Exhibit No.</u>	<u>Brief Description</u>
220	"Contract and Specifications" for the purchase of Provincial Building No. 2.
221	Bid sheet re tenders on Provincial Building No. 2.
222	Copies of tenders received re Provincial Building No. 2.
223	Transfer of land from the Crown to Charles J. Hobeck dated April 30th, 1954.
224	Lease from Charles J. Hobeck to the Crown dated May 1st, 1954.
225	Offer to lease signed by Charles J. Hobeck dated May 5th, 1954.
226	Assignment, Charles J. Hobeck to Prudential Investment Co. Ltd. dated June 7th, 1954.
227	Transfer of Land, Charles J. Hobeck to Prudential Investment Co. Ltd. dated June 7th, 1954.
228	Trust Deed made between Prudential Investment Co. Ltd. of the one part and John C. Landeryou, Roy S. Lee and William D. McNab of the other part, dated June 7th, 1954.
229	Letter Farrell Agencies to Mr. Arnold dated January 17th, 1949.
230	Request for transfer of funds, G. H. N. Monkman, Deputy Minister, to J. F. Percival, Deputy Provincial Treasurer, dated March 10th, 1949.
231	Recapitulation of purchase price, sale price and expenditure on renovating from 1949-50 re Provincial Building No. 2.
232	Letter, City Solicitor, Edmonton, to G. H. N. Monkman.

<u>Exhibit No.</u>	<u>Brief Description</u>
233	Letter, Mr. Monkman to City Solicitor, Edmonton.
234	Transfer of Land, M. W. Carrol to the Crown dated April 28th, 1953.
235	Transfer of Land, Western Investments Ltd. to M. W. Carrol dated April 22nd, 1953.
236	Transfer of Land, Polsky to Western Investments Ltd. dated July 26th, 1951.
237	Agreement for Lease, J. Hart to M. W. Carrol dated December 5th, 1952.
238	Option, Jack Hart to M. W. Carrol dated April 15th, 1953.
239	Offer to sell signed by M. W. Carrol, dated April 16th, 1953.
240	Letter, R. T. Robinson (Realty Service Ltd.) to Mr. A. J. Mason dated April 16th, 1953.
241	Listing of property, Buray to Farrell Agencies - no date.
242	Copy of transfer of land, John H. Hillier to Ensign Stores Ltd. dated December 18th, 1953.
243	Photographs of the 9th Avenue West Liquor Store, Calgary.
244	Letter, Geo. C. Lancaster to Minister of Public Works dated May 16th, 1950.
245	Copy of transfer of land, Geo. C. Lancaster to the Crown dated June 16th, 1950.

<u>Exhibit No.</u>	<u>Brief Description</u>
246	Plan of 9th Avenue Liquor Store, Calgary.
247	Excerpts from minutes of City Council, Calgary, re sale of land to Geo. C. Lancaster.
248	(See Public Works (a) report).
249	Letter, Skene & Gorman to McLaws & McLaws, dated April 23rd, 1953.
250	Letter, McLaws & McLaws to Skene & Gorman dated May 1st, 1953.
251	Cheque, Skene & Gorman, payable to John Hart for \$30,925.00, dated May 1st, 1953.
252	Mr. Arnold's written statement re 9th Avenue West Liquor Store, Calgary.
253	Mr. Arnold's report to Premier E. C. Manning dated May 10th, 1950 re 17 possible liquor store properties.
254	Mr. Arnold's report to Premier E. C. Manning dated May 12th, 1950, re two possible liquor store properties.
255	Photographs of 9th Avenue Liquor Store - after renovation.
256	Letter from G. H. N. Monkman to A. J. Mason, dated July 7th, 1950.
257	Letter from A. J. Mason to G.H.N. Monkman dated July 11th, 1950.
258	Letter from G. H. N. Monkman to A. J. Mason dated July 17th, 1950.
259	Letter from Scott & Gregg to Superintendent of Buildings dated June 16th, 1950.
260	Letter from Mr. Arnold to Geo. C. Lancaster dated June 14th, 1950.

<u>Exhibit No.</u>	<u>Brief Description</u>
261	Letter from Director of Surveys to Scott & Gregg dated June 27th, 1950.
262	Letter from Scott & Gregg to Hon. D. B. MacMillan dated June 7th, 1950.
263	Letter from Superintendent of Buildings to Scott & Gregg dated June 14th, 1950.
264	Four letters from Scott & Gregg to Director of Surveys dated July 3rd, July 13th, August 8th and August 10th, 1950.
265	Letter, A. J. Mason to G. H. N. Monkman dated July 21st, 1950.
266	Letter, G. H. N. Monkman to A. J. Mason dated July 28th, 1950.
267	Letter, A. J. Mason to G. H. N. Monkman dated August 2nd, 1950.
268	(Has no application to this subject).
269	Cheque of M. W. Carrol payable to Finlayson-Burneston Realty for \$1,000.00 dated April 15th, 1953.
270	Letter from M. W. Carrol to Finlayson-Burneston Realty, not dated.
271	Receipt signed by S. E. Kerr to Finlayson-Burneston dated March 18th, 1955, re document.
272	Letter from Halprin & Halprin to Finlayson-Burneston Realty dated March 27th, 1953.
273	Mr. Arnold's written statement re Chestermere Lake Gaol Site.

<u>Exhibit No.</u>	<u>Brief Description</u>
274	Clipping, Calgary Herald, March 14th, 1953, re Gaol in the Calgary area.
275	Topographical map of Calgary District.
276	Aerial view of Chestermere Lake area.
277	Department of Public Works file re Chestermere Lake property.
277A	Letter, Millard & Woolliams to Hon. Lucien Maynard dated July 12th, 1954.
277B	Topographical map of the Chestermere Lake property.
277C	Appraiser's report by Kelly-Lucy Adjustment Service to Tara Farms dated February 24th, 1954.
277D	Letter from George E. Church to Deputy Minister of Public Works dated July 19th, 1954.
277E	Letter from H. Brettelle, Supervisor of Maintenance, to Mr. Arnold dated August 2nd, 1954.
278 A to L	Newspaper reports and editorials re Chestermere property.
279	Form of Oath taken by a member of the Executive Council.
277F	Telegram from Macdonald Millard to Lucien Maynard, Attorney General, dated August 10th, 1954.
277G	Letter from Millard & Woolliams to Hon. Lucien Maynard dated August 11th, 1954.
277H	Memorandum dated August 12th, 1954, from the Attorney General to Hon. A. J. Hooke.

<u>Exhibit No.</u>	<u>Brief Description</u>
277J	Letter from Hon. Lucien Maynard to Mr. Millard dated August 18th, 1954.
277K	Memorandum dated August 24th, 1954, from the Attorney General to Mr. Arnold.
277L	Letter from Macdonald Millard to Hon. Lucien Maynard dated August 24th, 1954.
277M	Letter from Messrs. Soderberg & Higley to the Premier, with resolutions attached, dated September 17th, 1954.
277N	Letter from Messrs. Soderberg & Higley to the Attorney General with resolutions attached dated September 17th, 1954.
277-0	Letter from the Premier to G. F. Soderberg dated September 24th, 1954.
277P	Statement made to the Press by the Premier dated January 27th, 1955.
280	Transfer of Land, Manufacturers Life to Western Securities Ltd. dated February 11th, 1952.
281	Transfer of Land, McElroy et al to Western Securities Ltd. dated August, 1954.
282	Transfer of Land, Western Securities Ltd. to the Crown dated August 18th, 1954.
283	Transfer of Land, the Crown to George Floyd Stryker dated December 30th, 1954.
284	Letter from McLaws, McLaws, Bancroft & Deyell to W. G. Morrow, Q.C., Commission Counsel, dated April 5th, 1956.

<u>Exhibit No.</u>	<u>Brief Description</u>
285	Transfer of Land R. W. Hooper to Ensign Stores Ltd.
286	Notice of Caveat filed by Samuel Diamond dated June 25th, 1954.
287	Cheque payable by Province of Alberta to Millard & Woolliams dated August 17th, 1954, for \$127,875.50.
288	Option to purchase Tara Farms to Samuel Diamond dated June 11th, 1954.
289	Lease, Western Securities Ltd. to Carman Ellis dated December 20th, 1950.
290	Caveat filed by Samuel Diamond dated June 15th, 1954.
291	Syndicate agreement (unsigned) dated June 11th, 1954, Samuel Diamond et al.
292	Notice of Intention to Quit signed by Carman Ellis dated April 19th, 1955.
295	Copy of Plan A-1 showing site of 17th Avenue Liquor Store, Calgary.
296	Letter from J. B. O'Connor to Carman Ellis dated April 16th, 1955.
297	Letter from George Stryker to Carman Ellis dated April 15th, 1955.
298	Notice of Discontinuance of Stryker action against Ellis.
299	Farm listing given by Stryker to Swanson & McCool dated November 12th, 1954.

<u>Exhibit No.</u>	<u>Brief Description</u>
300	Transfer of Land, Stryker to the Crown dated December 22nd, 1954, re Section 28.
301	Transfer of Land, Stryker to the Crown dated December 22nd, 1954, re Section 27.
302	Transfer of Land, Stryker to the Crown dated December 22nd, 1954, re Section 26.
303	Transfer of Land, Stryker to the Crown, dated December 22nd, 1954, re Section 33.
304	Letter from Royal Bank to Hon. A. J. Hooke, dated January 8th, 1954, re Stryker.
305	Assignment, Stryker to Royal Bank dated January 10th, 1955.
306	Letter from George Stryker to Premier E. C. Manning, dated February 25th, 1955.
307	Lease from the Crown to George Stryker dated January 26th, 1955.
308	Letter from Gilbert Brothers to Premier E. C. Manning dated November 23rd, 1954.
309	Listing from George Stryker to T. A. Foley dated May 8th, 1954.
310	Listing from George Stryker to Harry Hudson dated August 25th, 1954.
311	Listing from George Stryker to A. L. Donovan dated October 25th, 1954.
312	Listing from George Stryker to John A. Morrison dated October 25th, 1954.

<u>Exhibit No.</u>	<u>Brief Description</u>
313	Letter from Gilbert Brothers to Premier E. C. Manning and Mr. Lucien Maynard dated December 9th, 1954.
314	Offer to purchase, dated December 9th, 1954, signed by George Stryker.
315	List of Improvements to Spy Hill property by George Stryker since 1950.
316	Letter from Hon. A. J. Hooke to Gilbert Brothers dated December 17th, 1954.
317	Letter from Gilbert Brothers to Premier E. C. Manning and Hon. A. Hooke, dated December 16th, 1954.
318	Document called "Inspection of Spy Hill Farm of George Stryker" prepared by P. H. Swanson.
319	Letter from Prudential Insurance Company of America to Swanson & McCool dated November 22nd, 1954.
320	Receipt for \$1,200.00, General Realty to S. and L. Diamond dated November 17th, 1953.
321	Written statement of Mr. A. J. Mason re 17th Avenue West Liquor Store, Calgary.
322	Written statement of Mr. Arthur Arnold re Spy Hill property.
323	Report on buildings at Spy Hill property by J. A. Inglis.
324	Photograph of Spy Hill site.
325	Sketch Plan of proposed Gaol at Spy Hill site.
326	Recommendation for a Special Warrant dated February 1st, 1955, re Spy Hill site.

<u>Exhibit No.</u>	<u>Brief Description</u>
327	Special Warrant dated February 10th, 1955 re Spy Hill site.
328	Mr. Macdonald Millard's file re Samuel Diamond.
329	Letter from General Realty to Minister of Public Works, Ottawa, dated February 11th, 1954.
330	Clipping from the "Vancouver Province" re Dollarton Golf Course.
331	Syndicate Agreement dated June 11th, 1954, Samuel Diamond et al.
332	Nine cheques written against the Samuel Diamond trust account.
333	Samuel Diamond trust account bank statements.
334	Group of three letters from Millard & Johnson to Carman Ellis dated December 20th, 1955, January 12th, 1956 and January 24th, 1956.
335	Transfer of Land, Myrtle Irving to Chestermere Development Ltd. dated February 28th, 1955.
336	Copy of Petition protesting Spy Hill site.
345	Excerpt from Edmonton Journal dated March 23rd, 1956.
346	Excerpt from Calgary Herald dated April 14th, 1956.
347	Issue of the Calgary Herald dated April 16th, 1956.

The evidence of the witnesses can be found at pages 2281 to 4383 of the transcript of evidence. In this report, any page references will be to that transcript.

Paragraph (b) of the terms of reference requires us to investigate and report upon the facts concerning several matters, namely:

- (a) the methods used by the Department of Public Works in the buying, selling, leasing or otherwise dealing in real property;
- (b) the purchase, sale or leasing or whether any Cabinet Minister or member of the Civil Service made any personal gain from the purchase, sale or leasing of the six properties described in the terms of reference.

We propose to deal with each of these matters separately.

1. Methods used in the buying, selling, leasing or otherwise dealing in real property.

Before dealing with the evidence, it is desirable to set out the relevant portions of the Statutes of Alberta governing the buying, selling, leasing or otherwise dealing in real property:

(a) The Public Works Department Act, 1951, Chapter 73, Statutes of Alberta 1951, contains:

"6. (1) Subject to the provisions of The Public Service Act, 1947, the Department shall have the administration and management of all lands, the property of the Province, that are held, used or occupied for public works.

(2) The Department may dispose of such lands from time to time with the approval of the Lieutenant Governor in Council under the hand and official seal of the Minister.

(b) The Surveys and Expropriation Act, Chapter 88, Statutes of Alberta 1951, contains:

"23. (1) Any property, real or personal, when no longer required for the use of any public works may be sold, leased or otherwise disposed of by the Minister.

(2) In the case of a mine or mineral any sale, lease or disposition shall be made pursuant to The Mines and Minerals Act.

(3) The proceeds of each such sale, lease or disposition shall be accounted for as public money and deposited in the General Revenue Fund.

(4) Whenever practicable such property shall be sold, leased or otherwise disposed of by tender or by public auction."

This Act also contains provisions permitting the Minister to take title to lands required for the purpose of a public work and fixing the amount of compensation which the Minister is ready to pay for such lands. If the amount so fixed is not acceptable to the person entitled to the compensation, the Act makes provision for the amount paid to be fixed by arbitration.

Mr. Arthur Arnold, Deputy Minister of Public Works, filed a written statement with the Commission (marked Exhibit 194) outlining the methods used by the Department in buying, selling, leasing or otherwise dealing in real property. We quote that statement in full as follows:

" METHODS USED BY THE DEPARTMENT OF PUBLIC WORKS IN THE BUYING, SELLING, LEASING, ETC., IN REAL PROPERTY.

PURCHASING.

In purchasing a piece of property, the Department of Public Works, as a general rule, deals directly with the owner. If, by a statement in the Legislature or a statement in the Press, it has been made public that the Government is interested in property in such and such a neighbourhood, unsolicited offers are often made by owners owning property in such locations. Every offer is investigated by members of the Department

"of Public Works, together with members of the staff of the Department for which the property is being purchased. If a satisfactory price can be arrived at, the purchase is made.

In other cases, the Department may be interested in a specific piece of property or location, in which case we endeavour to keep this fact confidential and will ask some Real Estate man to approach the owner for a listing and to secure from him the lowest price, without revealing the name of the prospective purchaser. Members of the Department of Public Works, together with members of the specific Department interested, inspect the various properties offered and a decision is reached.

Sometimes offers are made to the Government by owners desirous of selling a building or a piece of land, even though the Government may not have indicated in any way that we may be interested. On some occasions Real Estate men have telephoned or otherwise communicated with the Department, stating that they have a listing on a certain building and ask whether or not we may be interested in its purchase. There exists numerous instances where this has occurred. In property adjacent to highway and/or for use of Department of Highways,

"this is purchased by the Department of Highways right-of-way buyer. I offer a statement showing purchases made since 1950.

DISPOSING OF PROPERTIES.

The Government always advertises the property concerned in local newspapers, and public tenders are accepted and the sale is to the highest bidder. I offer a statement showing sales made.

LEASING SPACE.

After other Departments have determined their policy with regard to space required and where it has been approved that space may be leased, the Department concerned may have already located suitable accommodation for their requirements, or may request my Department to find them space, in which case we submit for their approval any locations found. When approved, the following procedure is adopted:

1. Five copies of Lease are typed according to terms of Rental Agreement form, which is completed by the owner of the Building.
2. One copy of Lease is forwarded to the Attorney General's Department for approval as to form. When copy returned to this office with approval -
3. Forwarded to the Purchasing Agency for approval, and when approved by the Chairman the copy is returned to this Department.

- "4. All five copies of lease are forwarded to the Lessor for signature and he is requested to return all copies to this office for completion by the Minister.
5. When returned to this office by the Lessor all five copies are forwarded to the Deputy Minister for execution.
6. When lease has been completed by all parties, the copies are distributed as follows:
 - (a) Original and copy with the approval of the Attorney General's Department, and Purchasing Agency retained in this office.
 - (b) Second copy forwarded to Lessor for his records.
 - (c) One copy forwarded to Purchasing Agency for their files.
 - (d) (Optional) One copy forwarded to the Department who occupy the premises. (e.g.) Treasury Branch.
7. Entered in lease book.

I offer specimen lease form. "

Mr. Arnold filed Exhibit 195, being a statement showing all real properties purchased since 1950. From this exhibit we have abstracted the following information indicating in each group the total price paid:

- (a) Nine properties were purchased through real estate agents for \$398,770.00;
- (b) Twelve properties were purchased through Highways Right-of-Way Buyers, District Engineers, etc., for \$49,207.50;

- (c) Eight properties were purchased after being offered direct to the Department by the owners for \$573,253.16;
- (d) Twenty-four properties were purchased after negotiations directly with the owners by Department staff for \$266,794.63;
- (e) One property was obtained from the Dominion Government for \$12,532.00;
- (f) One property was obtained from the Eastern Irrigation District, by exchange of land, having a value of \$21,500.00;
- (g) One property was obtained from Eastern Rockies Forest Conservation Board for \$18,979.47.

The witness filed Exhibit 196 being a statement showing all real properties sold during 1954 and 1955. This document also gives details of all bids received. In each case the property was sold to the highest bidder. Five properties were sold in that period, the total realized being \$513,150.00. The exhibit shows that these properties were originally acquired by the Government at a total cost of \$190,005.49. These figures make no allowance for monies spent on renovations (if any), nor do they allow any credit for rentals accrued to the Government during its term of occupation.

The following questions by Commission Counsel and answers by Mr. Arnold appear at pages 2288 and 2289:

- "Q Mr. Arnold, when your Department is contemplating the purchase of property do you normally obtain outside valuations or do you have evaluations made by your own appraisers?
- "A We have had evaluations made by outside appraisers.
- "Q Which is the normal procedure?
- "A The normal procedure is we value them ourselves.
- "Q You have your own appraisers?
- "A We have a staff in the office, yes.
- "Q Is that one of their functions to appraise?
- "A It is not especially for that, I mean he has other work to do.
- "Q Do they have any experience in evaluating property?
- "A I would say they have.
- "Q But you say you have on occasion obtained outside opinions on property?
- "A Yes.
- "Q What about when you sell a piece of property?
- "A We usually put the property up for tender and that automatically makes the value of it.
- "Q Normally you don't have any value put on?
- "A Any upset value, you mean?
- "Q Yes?
- "A No.
- "Q What is the policy of the Department with respect to expropriating property, that is taking it without negotiating?

"A We have never done that as I recall or can remember. I don't think it has been the policy of this Government as far as I can find out to expropriate.

"Q You either buy or negotiate a price or tender for it?

"A That is right. We have had occasions where it has been contemplated to make an expropriation but it has been ruled that is not the method we should obtain it or use.

"Q And in your experience there has been no case of expropriation?

"A No, we have never. That is our Department -- I think perhaps the Highways may have expropriated.

"Q We are not talking about roads but about buildings and land on which you are going to build?

"A That is right.

"Q And that would apply to any department that you acted for in the purchase or sale of property?

"A That is right."

At page 2343, Mr. Arnold adds to the above by stating that in a few cases, after the purchase price had been agreed upon, expropriation proceedings were taken by arrangement with the owner.

Mr. Arnold was the only witness heard on this phase of our investigation. His testimony and the exhibits above referred to constitute all of the direct evidence on this subject. Indirectly, however, the evidence adduced on

the subjects of the specific properties referred to in reference (b) has been very helpful in illustrating how the general method has functioned in actual cases of both purchase and sale of real property.

We respectfully point out that:

(a) Of the six property purchases listed in paragraph (b) of the reference, four were negotiated by the Department of Public Works, one by the Liquor Control Board and one by the Honourable Attorney General.

(b) The normal procedure is that officials of the Department of Public Works appraise the property to be purchased, but on occasion outside valuations are obtained.

(c) The tendency of officials in the Department of Public Works seems to have been to appraise the property in the light of its use value to the government, and not too much consideration has been given to actual market value.

(d) If an owner knows or suspects that the Government is interested in purchasing his property, his asking price immediately goes up.

(e) Although the personnel of the Department of Public Works may be capable of appraising an existing build-

ing and of assessing its use value to the Government, they are not necessarily fitted by either training or experience to adequately assess the market value of farm lands or urban lands in the widespread areas of this large Province.

We therefore recommend that the whole system or machinery used in making land purchases be re-examined. We suggest that the purchase of land should be handled by one Department of the Government and that the responsibility of such purchases should be placed in the hands of a competent and experienced person in that Department. Such person should, of course, work in close liaison with the Department or Departments for which the proposed purchase is being undertaken. In most cases of proposed purchase it would, in our opinion, be wise to obtain at least one independent appraisal, preferably from a first class appraiser engaged in business in or near the district in which the land is located. Whether land purchases should be handled by the Department of Public Works, or by the Provincial Purchasing Agent, or by some other Department, does not seem to us to be important provided the personnel in charge are capable and are fixed with full responsibility in all cases.

2. Provincial Building No. 2, Edmonton.

This building was constructed by Louis Buray, an Edmonton contractor, at a cost estimated by him at \$61,000.00, excluding the value of his own time (p. 2488). Mr. Buray said that he listed the property for sale with Farrell Agencies early in 1949 at a price of \$75,000.00 (p. 2481). A sale of the property was made by Farrell to the Provincial Government for \$75,000.00 and Buray signed a transfer of land dated March 18th, 1949, filed as Exhibit 216.

Bruce P. Farrell of Farrell Agencies, Edmonton, said that he obtained a listing of this property from Buray because he had read an article in the Edmonton paper that the Government was very short of office space (p. 2628). The listing was for \$75,000.00 (p. 2628), is dated December 29th, 1948, and was filed as Exhibit 241. Farrell then contacted the Honourable Mr. Tanner who showed some interest but said the Government would rather rent than buy the property (p. 2631). Farrell told Mr. Tanner that Buray was not interested in renting. Farrell quoted a price of \$75,000.00 to Mr. Tanner who suggested a lower price but Farrell told him that Buray had fixed the figure of \$75,000.00 and there was no chance of "getting him to reduce

the figure, he wouldn't" (p. 2636). Farrell said that shortly thereafter he attended at the building when it was inspected by Messrs. Monkman, Arnold and another man he did not know (p. 2631). Mr. Arnold then wrote Farrell a letter dated January 8th, 1949 (Exhibit 217) offering to purchase the property at \$75,000.00, subject to certain conditions regarding the tenants. Buray accepted in writing (Exhibit 215) and the transaction was completed, subject to some difficulties with respect to tenants which difficulties are of no importance to this inquiry. Mr. Farrell said that in his opinion \$75,000.00 was a fair price (p. 2638) and that \$3.00 per square foot per year was a fair rental value for this property in 1952 (p. 2637). The following questions and answers appear at p. 2641:

"Q MR. MILVAIN: Now, Mr. Helman mentioned to you appraisers, in your experience as a real estate agent have you found that when large concerns are buying valuable property with buildings on them that it is usual to employ an appraiser?

"A I think that they do.

"Q MR. HELMAN: Just a minute, Mr. Farrell, if a large concern has in its, in its staff people who are thoroughly familiar with the cost of buildings, would they employ an appraiser there?

"A I don't think they would have to."

Mr. Arthur Arnold, Deputy Minister of Public Works, gave evidence and filed a written memorandum on this subject as Exhibit 218, which we quote in full:

" Re: PURCHASE OF PROVINCIAL BUILDING
NO. 2, EDMONTON.

In the Fall of 1948, the Government was desperately in need of office space. This was caused partly because of the discovery of oil, and the Department of Lands & Mines was being made into two separate Departments - Lands & Forests, and Mines & Minerals; the necessity of finding space for the Central Registry Office, Provincial Secretary's Department, and the general rapid growth of the Province.

The crowding conditions had reached such proportions that employees were being required to work under totally unsatisfactory conditions. Female employees were required to work in the sub-basement area of the Natural Resources Building on 109th Street, without services or adequate ventilation. Even corridor space was being used as office areas.

The urgent necessity of office space had been discussed, and in the Fall of 1948 plans were

"in preparation for the structure now known as the Administration Building. But this would take two years to plan and construct, and could not be considered as an immediate solution.

On December 30, 1948, Mr. Bruce Farrell, of Farrell Agencies, telephoned to the Honourable Mr. Tanner, Minister of Lands & Mines, and offered him the Louis Buray building, 9909 - 109 Street. From the correspondence it would appear that Mr. Tanner suggested that the Government might be interested in renting it, rather than buying it. Mr. Farrell told him that the building was for sale only. I then understand that Mr. Tanner told the Farrell Agencies to get in touch with the Minister of Public Works. It was on orders from my Minister that I examined this building in January 1949, in company with Mr. G. H. N. Monkman and Mr. James Hackett, Foreman Carpenter.

Upon my inspection, and in view of the fact that this building was so near to the Government buildings, it was recommended that the offer of \$75,000.00 be accepted, contingent to obtaining completely vacant premises, and that the Government not be mentioned in making arrangements to vacate. This was confirmed in a letter to Mr.

"Farrell on January 8th, 1949.

I offer this letter.

The letter was approved by my Minister, and we formally purchased the building as of March 31st, 1949.

I offer the Transfer.

This building was then altered to fit the specific needs of the Department of Industries & Labour, at a cost of \$23,169.34. The Department of Industries and Labour occupied this building from then until completion of the new Administration Building on December 16th, 1952. They then moved into the new Administration Building.

We were then renting space for the Highway Traffic Department in the Qu'Appelle Building down town, and it was considered after the building was vacated by the Department of Industries & Labour, that we should move the Highway Traffic Board into the Provincial Building No. 2, for one main reason - that the Licensing Departments should be as close as possible to each other, because the Highway Traffic Board issues all truck licenses, and the Provincial Secretary's Department located in the Natural Resources Building at that time, was issuing all passenger car licenses. It

"was then considered a good move to have these Departments as close as possible.

The Highway Traffic Board then vacated the Qu'Appelle Building, and moved into Provincial Building No. 2 on March 31st, 1953.

As it was anticipated that additional office space would become available due to the plans being projected by the Department, Provincial Building No. 2 was offered for sale with a group of four others on February 3rd, 1954, and other dates.

I offer the advertisement and terms of purchase.

This building was being disposed of due to the programme of consolidating all offices at one location. It was sold on March 31st, 1954, to Charles Hobeck, 11008 - 85 Avenue, Edmonton, who submitted the highest tender of \$64,000.00. The other prices were as follows:

Jess Clemmensen, 10305-116 Street,
Edmonton \$51,000.00

George C. Mathews and Helen V.
Mathews, 10018-112 Street, Edmonton 40,040.40

J. M. Olyan, 11049-88 Avenue,
Edmonton 35,111.00

Louis Lieberman, 13702-102
Avenue, Edmonton, and William
Lutsky, 10324 - 135 Street,
Edmonton 31,460.00

" You will note that at the time we purchased this building in 1949, until the time of the sale in 1954, it had lost in value. This may seem unusual, as the property values in the City of Edmonton were on the rise. I would like to therefore explain the circumstances. At the time we purchased this building, it contained 19 or 20 apartment suites, with kitchens, etc. The basement was rented to a Beauty Parlour, and the ground floor was rented to a restaurant. This was a much higher revenue producing building than for open office space. However, we had had the use of this building for five years, which made good temporary accommodation for us. We did not wish to maintain possession of a building when we were offered what we felt was a reasonable price at that time.

This was a frame building, and at the time of its purchase was considered only a temporary expedient. This was considered as we had looked into the question of erecting Quonset huts.

In the terms of purchase prescribed, under which Mr. Charles J. Hobeck bought the building from the Province, it was provided that the Department of Public Works had the right to rent from the purchaser, Mr. Charles J. Hobeck, any part, or all of the building, at a rental rate of

"\$3.00 per square foot per annum, the rental to include all utilities, janitor service and elevator service. A further provision in the terms of purchase was that the Department of Public Works had the right to terminate the lease at any time prior to the expiration of the year, on a 30 day notice.

Pursuant to the terms of purchase the Provincial Building No. 2 was rented from Mr. Charles J. Hobeck by lease, dated May 1st, 1954.

The Public Works Department took possession as a tenant May 1st, 1954. The Highway Traffic Board continued to occupy the building as it had done prior to this date.

The Highway Traffic Board remained in the building until July 1st, 1955, and then moved into the new Highways Building.

It should be noted whereas the lease between Mr. Charles J. Hobeck and the Province required Mr. Hobeck to pay for janitor services, it was mutually agreed between Mr. Hobeck and the Department of Public Works that the Province would supply its own janitor service and that Mr. Hobeck would deduct from the Government rental at the sum of \$8,080.00 per annum.

" On June 7th, 1954, Mr. Hobeck assigned to Prudential Investment Company the benefits of his lease with the Province. As a result of this assignment, the Province paid its rent to the Prudential Investment Company from and after July 1st, 1954.

The rental of \$3.00 per square foot, which the Province agreed to pay to Mr. Hobeck was considered to be a fair rental and it will be noted it was the same rental mentioned in connection with the Province's right to rent back all the buildings offered for sale by the Province in February, 1954."

In further explanation Mr. Arnold told us that in this case no independent appraisal was obtained (p. 2541) but the building was examined by Messrs. Monkman, Arnold and Hackett for the purpose of ascertaining whether it would suit government needs at that time (p. 2541). Mr. Arnold stated he thought \$75,000.00 was a fair price and he said the property was worth that amount (p. 2545).

At the time of sale of the building by the Government, all the bids received were entered on the bid

sheet and then all the information was sent to the Minister, Honourable Mr. Hooke. The witness said he understood Mr. Hooke took this information to the Cabinet for approval of the sale (p. 2521). Provision was made in the sale arrangements, giving the Government the right to lease the building for one year, subject to thirty days' cancellation by the Government, in case the new building being constructed was not ready in time (pp. 2522-3). Mr. Arnold said his Department "thought if we got around \$50,000.00 for Provincial Building No. 2 it would not be too bad" (p. 2528). The tender submitted was higher than that figure and the building was sold (p. 2529).

The Department had considered the erection of Quonset huts to provide temporary space but discarded the idea (pp. 2533-35). Mr. Arnold said that taking into consideration the cost of the building, the cost of renovations, and the amount realized from its sale, the space in it cost the Government approximately \$1.80 per sq. ft. per year (pp. 2563 & 2567). Mr. Arnold said this was comparatively cheap rental for temporary premises (p. 2563).

Charles J. Hobeck, the purchaser of the building, gave evidence, his testimony being at pages 2642-2686. Mr. Carl W. Clement, Q.C., solicitor for Canada West Insurance Company, also gave evidence at pages 2686-2695. Mr. Hobeck

is President of Canada West Insurance Company. Other than the fact that Mr. Hobeck swore that no Cabinet Minister or member of the Civil Service received any monies from the sale of this building (pp. 2653-4) we do not think the evidence of Mr. Hobeck or of Mr. Clement throws any further light on the subject under investigation.

We have summarized the facts as presented to us concerning the purchase of Provincial Building No. 2, the subsequent sale of the building, and the leasing of same by the Government. There was no evidence that any Cabinet Minister or any member of the Civil Service made any personal gain from the purchase, sale or leasing of Provincial Building No. 2.

3. Alberta Block, Edmonton.

This property was purchased by the Government from Arthur D. Davis and Augustus L. Urch on or about August 23rd, 1952, for the sum of \$225,000.00. Messrs. Davis and Urch both gave evidence, Davis at pages 2297-2342 and Urch at pages 4185-4199. Mr. Davis owns the Royal, Wales and Noble Hotels in Calgary. Mr. Urch is retired but was formerly in the hotel business in Edmonton, Calgary, Rocky Mountain House and Wetaskiwin. Urch acquired an option

to buy the Alberta Block for \$175,000.00 about October 1st, 1951, from Alberta Block Ltd., the owner of the building. A copy of the option dated the (blank) day of October 1951 was filed as Exhibit 202. The sum of \$1,000.00 was paid for the option which covered option rights to February 1st, 1952. The document provided that upon payment of an additional sum of \$2,000.00 before February 1st, 1952, the term of the option would be extended to June 1st, 1952. The additional \$2,000.00 was paid by Davis and Urch (pp. 2301 & 4187).

Although the option was taken in the name of Urch only, Davis was involved in the transaction with him. Urch said he purchased the option thinking the building would be suitable for use as an hotel or perhaps a rooming house and he stated that in any case it seemed like a very good buy (p. 4186) because values in that part of the City were going up. Davis and Urch went to the Treasury Branch in an effort to arrange a loan on this building (pp. 2312 & 4188) but were not able to obtain a loan. During the conversation with Mr. Olive at the Treasury Branch the idea of perhaps selling the building to the Government developed and Mr. Olive suggested that Davis and Urch interview Mr. Moore of the Government Insurance Office which seemed to be in need of space (pp. 2313 & 4189). They interviewed Mr.

Moore and he suggested they discuss the matter with Honourable A. J. Hooke (pp. 2314 & 4191). Mr. Hooke, in turn, sent them to interview Honourable D. B. McMillan, Minister of Public Works and the property was offered to him at a price of \$250,000.00 (p. 2315). Mr. Urch had his solicitor, Mr. Ogilvie, write a letter to Mr. Hooke offering the property at \$250,000.00 (p. 4191). About August 1st, 1952, Provincial Auditor Huckvale entered into the negotiations and said that the asking price was too high in view of the price paid for the property by Davis and Urch, who then made a new offer of \$240,000.00 (p. 4194). Urch said that later on Mr. Huckvale called him on the telephone and said the price was too high and the Government would not pay more than \$225,000.00 (p. 4194). A deal was made at that figure (p. 4194). The transfer of land to the Crown is dated August 23rd, 1952, and was filed as Exhibit 201.

In the meantime, Davis and Urch exercised the option a few days before it expired on June 1st, 1952 (pp. 2307 & 4190). Davis paid \$150,000.00 of the purchase price and Urch paid \$25,000.00 (p. 4190). A transfer of land was taken from Alberta Block Ltd. to Augustus L. Urch dated June 5th, 1952 and filed as Exhibit 199. By transfer of land dated June 6th, 1952, Urch transferred the property to himself and Davis (Exhibit 200). This document shows

Davis owning a three-quarter undivided interest in the property and Urch a one-quarter undivided interest. The consideration set out in Exhibit 200 is \$233,333.00, which figure was fixed by Davis and Urch to set up their own partnership arrangement (p. 2310).

Davis and Urch had originally thought of converting the property into an hotel but had changed their plans and decided to make it an office building (p. 2311). They had ascertained that it would have involved considerable expense in alterations to put the building in condition to be used as an hotel and to enable them to obtain a beer license (p. 4199). Davis also related that he was building an extension to the Royal Hotel in Calgary in 1952, where he had incurred a lot of extra expense in the foundation work, and needed additional money for that purpose (p. 2312).

Davis and Urch had received other offers for this property, one for \$197,000.00, a second from Belzberg & Singer of \$203,000.00 and a third of \$225,000.00 from unnamed clients of Messrs. Smith, Clement, Parlee & Whitaker, solicitors of Edmonton (p. 2317). A letter from these solicitors was filed as Exhibit 203. It is dated August 20th, 1952, addressed to Mr. Urch and states:

" You will recall that on the 18th of June, 1952, our clients offered you \$225,000.00 for the Alberta Block, and you refused to accept their offer.

It would appear that this property has not been sold and our clients were wondering whether or not you are still interested in selling the property.

Would you kindly advise."

Mr. Davis estimated that, over and above the purchase price, he and Urch had spent about \$14,000.00 on or in connection with the property, including real estate agent's commission, travelling expenses, legal costs, unearned increment tax, architect's plans, etc. (pp. 2320-1).

Mr. Davis stated that he and Urch had no interviews with any of the government officials prior to the making of the second payment of \$2,000.00 on the option (p. 2342). He said these interviews did commence before the property was actually purchased by exercise of the option (p. 2314).

Mr. Arnold, Deputy Minister of Public Works, gave evidence and filed a prepared statement as Exhibit 205 which is as follows:

" RE: PURCHASE OF ALBERTA BLOCK, EDMONTON.

The Alberta Block is situated at 10526 Jasper Avenue. Approximately a week or ten days before May 29th, 1952, the Honourable Mr. McMillan, the then Minister of Public Works, gave me verbal instructions to inspect the above building in my capacity as Superintendent of Buildings, informing me at that time that the Alberta General Insurance Company was interested in buying it and putting it in shape for use by that organization for its offices and leaving the rest of the building as a revenue producer.

As a result of these instructions I inspected the building, together with four members of my staff:

Mr. David Panar, Mechanical Engineer.

Mr. H. Bogehold, Construction Engineer.

Mr. A. Edinga, Chief Construction Draughtsman.

Mr. R. Proudfoot, Electrical Engineer.

Having received their reports, copies of which are produced herewith, and as a result of my own inspection, I then made a report addressed to the Honourable A. J. Hooke, Minister of Economic Affairs, as the Alberta General Insurance Company came under his jurisdiction.

I offer this report.

" When I made this report I did not anticipate the much more extensive alterations which were necessitated by the subsequent changes in the use to which the building was put, having regard to the revision of the Government's plans for its occupation.

At this time I understood from Mr. McMillan that the price that was then being asked for the building was \$250,000.00.

It appears from an examination of the files of the Department that in May 1947 the building had been offered through Home Agencies to the Government for the sum of \$155,000.00.

In 1948 the building had been offered through a real estate firm known as Weber Brothers to the Government for \$175,000.00.

At both these times Mr. G. H. N. Monkman, the then Deputy Minister of Public Works, had informed the persons making the offer that the Government was not interested in the purchase of this property.

In July 1952 I was informed that the Alberta General Insurance Company was not interested in buying the building, but that the Provincial Government itself was contemplating purchasing the same for various purposes.

" So far as I am aware negotiations were carried on by Mr. Hooke, the then Minister of Economic Affairs, Mr. McMillan, the then Minister of Public Works, and Mr. Huckvale, the Provincial Auditor, direct with Mr. Davis, one of the owners of this building, and a price of \$225,000.00 was agreed upon.

The building was acquired on August 25, 1952, and the first steps of remodelling were the provision of space for the Treasury Branch, West End Branch, which incurred, among other expenditures, the installation of vaults at a cost of \$15,000.00. Steps were subsequently taken to put in further improvements and to reconstruct a considerable portion of the building, which changes, as I have already pointed out, were not contemplated when I made my original report to Mr. Hooke. A portion of the building was also made suitable to comply with the specialized requirements of C.K.U.A. at an expense of over \$80,000.00. These improvements as finally made consisted of the following:

Structural work, office partitioning, counters, acoustic treatment of building, painting, stucco work, plastering, rubber tile flooring, fire escape, etc.	\$ 366,093.02
--	---------------

" Plumbing, heating and air conditioning	94,423.01
Electrical installation, including fixtures and special wiring for radio station C.K.U.A.	<u>45,022.74</u>
	<u>\$505,338.77</u>

In my opinion this building, having regard to the value of the property on which it is situated, would now be valued at considerably more than its cost including the cost of improvements.

As against the cost of the improvements which were placed on this property there was recovered \$30,435.34 in rents up to the 31st day of May 1954, less maintenance costs, and prior to the premises being occupied by Governmental Institutions, and approximately \$5,000.00 was obtained from salvage."

Mr. Arnold's report to the Honourable A. J. Hooke dated May 29th, 1952, was filed as Exhibit 206. A special warrant dated August 23rd, 1952, was passed to provide the funds for purchase of this building. It was filed as Exhibit 207. There had previously been a recommendation for a special warrant dated July 3rd, 1952, in the sum of \$250,000.00 (p. 2444).

Mr. C. K. Huckvale, Provincial Auditor, was called as a witness, his evidence appearing at pp. 2459 to

2477. When he received the recommendation for a special warrant dated July 3rd, 1952, he did not approve it (p. 2461). In the first place he disapproved because the new Administration Building was about to be completed and he did not understand why another building should be purchased at that time (p. 2462). He spoke to Mr. Monkman, Deputy Minister, who knew nothing about the matter because he had just returned from sick leave but he did remember the previous offers made in 1947 and 1948. Mr. Huckvale then called for the files (p. 2462) and learned about the 1947 offer of \$155,000.00 and the 1948 offer of \$175,000.00. He then discussed the situation with the Honourable D. B. McMillan and the Honourable A. J. Hooke (p. 2463). He ascertained the price paid for the property by Davis and Urch was \$175,000.00 (p. 2463) and came to the conclusion that the asking price of \$250,000.00 was too high. With the approval of the Ministers, he then had a meeting with Davis and Urch who explained that although the purchase of the property was not completed until June 1952, they had held an option on it since early in October 1951. They also explained they had gone to certain expense in connection with their plans for the building and the difference between \$175,000.00 and \$250,000.00 did not represent a profit of \$75,000.00 to them (pp. 2465-6). Mr. Huckvale then had further meetings with the same Ministers at which

a decision was reached that \$225,000.00 would be a fair price (p. 2465). He made a counter offer of \$225,000.00 for the Government. At first Davis was not inclined to accept but later he said that he would complete the deal on that basis. The special warrant, Exhibit 207, was then prepared and passed with the approval of Mr. Huckvale on August 23rd, 1952.

Mr. Huckvale said (p. 2467) that the Ministers explained to him at the above meetings that the building was required for occupation by the Treasury Branch, Life Insurance Company of Alberta and Alberta General Insurance Company, and by the nature of the businesses operated by them it was desirable that they have accommodation in the business section of the City, and not in the vicinity of the Parliament Buildings (p. 2468).

Mr. Huckvale agreed that the fact an application for a special warrant came to him on July 3rd, 1952, requesting \$250,000.00, would indicate that it previously had been decided to pay that price for the building (p. 2477).

We have summarized the facts presented to us concerning the purchase of the Alberta Block, Jasper Avenue West, Edmonton. There was no evidence that any Cabinet Minister or any member of the Civil Service made any personal gain from the purchase of that building.

4. 17th Avenue West Liquor Store, Calgary.

Mr. A. J. Mason, who before retirement in 1955, was for many years Chairman of the Alberta Liquor Control Board, gave evidence on this subject at pages 4230-4248.

He filed a prepared statement as Exhibit 321, reading:

" For some considerable time the Alberta Liquor Control Board had realized that the two Government Liquor Stores operating in the City of Calgary were quite inadequate to take care of:

- a. The volume of business offering
- b. The convenience of the citizens who patronized them.

As a result the Board made a number of surveys in an endeavour to locate property which would be suitable for the purpose of establishing a further store or stores.

It was first considered that a store on the North Hill would relieve the situation to a large degree. This move did not however meet the approval of some of the local residents who protested the establishment of a store in the area in which they

"either resided or conducted their business. Numerous protests were forwarded to the Calgary offices of the Board, and His Worship the Mayor of Calgary also went on record as being opposed to a store on the North Hill. As a result of these protests it was decided to abandon the project.

Owing to the reception accorded to the effort of the Board to establish further facilities it was decided that no further liquor stores would be opened within the limits of the City of Calgary until such time as the City Officials had expressed approval of the proposal and also of the proposed site.

After reviewing the Christmas and New Year's business at the main store on 9th Avenue and 5th Street W. during December 1952 it was realized that the provision of a further store should not be further delayed. In consequence I spent some time in Calgary early in February, 1953, with the object of examining several properties then being offered for sale. It had been decided that a store somewhere along 17th Avenue would probably best serve to relieve the situation at the main store.

" From the viewpoint of the Board the most desirable piece of property offered was that at the intersection of 17th Avenue and 11th Street W. This met all the requirements of the Board - distance from places of worship, schools, residential areas, etc. This property was zoned for commercial purposes. It was sufficiently large to permit the provision of off-street parking and 11th Street provided a level crossing over the railroad track. At this time the property was being operated as a used car sales lot.

Mr. R. T. Robinson of Realty Service Limited, who had shown this property to me was instructed to ascertain whether the property could be purchased and if so at what price. During the conversations with Mr. Robinson a tentative figure of from \$35,000.00 to \$40,000.00 was mentioned by me as the approximate limit to which the Board would be prepared to go.

In order to obtain the reaction of His Worship the Mayor and of the City Commissioners I discussed the proposal with them. As a result of these conversations it was decided to go ahead with the proposal provided that the property could be purchased at a reasonable price.

" After my return to Edmonton and during the following several weeks, I received a number of telephone calls from Mr. Robinson advising of his progress in negotiations. After some time had elapsed he advised that he was unable to deal direct with the registered owner as the latter had given a lease with the right of first refusal to purchase to the tenant, and that this lease would not expire until the end of the year 1953.

The holder of this lease, upon being contacted by Mr. Robinson quoted a price of \$54,000.00 at which he would be prepared to sell. I rejected this offer. Subsequently other offers on the same property were submitted by Mr. Robinson and rejected.

On the 16th April, 1953, a further telephone message from Mr. Robinson advised that the lease holder would agree to exercise his option, obtain title and then sell the property for \$46,000.00.

At that time Mr. Robinson advised me that other parties were dickering for the property and that in his opinion it was worth in the neighbourhood of \$50,000.00. Mr. Robinson mentioned that a major oil company was interested in the property for a gasoline station.

As no other property as suitable for the purpose of the Board had been located and in view

"of the urgency for the provision of additional facilities without delay it was decided to accept the offer and the purchase was made."

Under further examination Mr. Mason said that before joining the government service he had nineteen years' experience in the banking business (p. 4236). Mr. Mason first met Robinson, the real estate agent, when Robinson was trying to interest him in a property adjoining the proposed North Hill Liquor Store site (p. 4238). The first time Mason saw the 17th Avenue property was in February 1953 (p. 4240) at which time it was being operated as a used car lot. At that time Robinson estimated the property to be worth \$50,000.00 (p. 4241). Mason told him the Government would not want to pay more than \$35,000.00 to \$40,000.00 for a liquor store site (p. 4241). He also told Robinson the Government would not buy a property if it had a residence on it (p. 4241). Robinson told him, probably towards the end of March, that he could not deal with the owner because someone had a lease with a first option to buy and he was endeavouring to deal with the fellow who held the lease (p. 4244). The first price suggested was \$54,000.00 which was turned down (p. 4245). Mason told Robinson the Government would not consider such high prices (p. 4246). Mason thought Robinson phoned him seven or eight times before the price came down

to \$46,000.00, and that price was finally agreed upon (p. 4246).

Richard T. Robinson, the real estate man referred to by Mr. Mason, gave evidence at pages 2567 to 2626. He is a real estate agent carrying on business in Calgary under the name Realty Service Limited, and he was so operating when he handled the purchase of the 17th Avenue Liquor Store site (p. 2568). When he and Mr. Mason looked at the 17th Avenue West property Robinson had no listing (p. 2572). The site was vacant property with a small building on it used as a used car lot office (p. 2573). He told Mason that he thought the property should be worth at least \$50,000.00 (p. 2573). Mason said he was figuring on something in the thirty thousands but asked Robinson to find out the best price that could be obtained on the property (p. 2574). Robinson then attempted to ascertain who owned the property. He went to the used car lot and as a result later interviewed Mr. Jack Hart. Hart said he would sell the property but would not give a definite price (p. 2575). Robinson did not make a search of the title to ascertain the name of the registered owner (p. 2593). When Robinson interviewed Hart the latter did not tell him that Carrol had a lease of the property with a right of first refusal (p. 2604). Later Robinson ascertained that Carrol held a lease for one year. This lease, dated December 5th, 1952, was filed as Exhibit 237. After providing for a lease for one year at

a rent of \$125.00 per month, the document says:

"the Lessee is to have first opportunity of purchasing property during his lease period."

Robinson first discussed the property with Carrol at some time prior to April 15th, 1953 (the date of Carrol's option to be mentioned later) (p. 2580) and was informed by Carrol that he (Carrol) had a first option on the property. When Robinson asked if he would be interested in selling he replied, "Yes, at a price", and a price was then quoted by Carrol of \$54,000.00 (p. 2581). Robinson passed on the figure of \$54,000.00 to Mason who flatly refused to consider it (p. 2581). Robinson had numerous conversations with Carrol and Carrol finally said he would take \$46,000.00 which was as low as Robinson could persuade him to go (p. 2582). On April 16th, 1953, Robinson had Carrol sign an offer to sell at \$46,000.00 (p. 2583). This offer was filed as Exhibit 239.

Robinson 'phoned Mason and was told that the Department would buy at the \$46,000.00 figure (p. 2584). Robinson made a deposit of \$1,000.00 from his own money (p. 2586) and then Mason sent him \$4,600.00, being 10% of the purchase price (p. 2586). The transaction was subsequently completed (p. 2587).

When asked if he considered the site was worth \$46,000.00, Robinson said, "Yes, I believe it was worth more", (p. 2588). The witness said that he had no knowledge of any money being paid to any Cabinet Minister or member of the Civil Service and said that no part of his commission was paid to any such person (p. 2589). Carrol did not know until after he signed the offer to sell whom Robinson was representing (p. 2614). Carrol paid Robinson's commission of 5% (p. 2614). At the conclusion of his evidence the witness volunteered the following (p. 2626):

"I don't know if it would do any good pointing out how I based my price on that property; I feel if they complain they paid too much it is my fault; I urged Mr. Mason that I was giving him a good deal -- basing it on all the sewer lines, no houses to move, it was levelled -- there was a lot of things I took into consideration based on that, basing that -- from what I sold other properties in other locations; I feel I was the one that led Mr. Mason to believe that he got a good deal -- which I still feel."

Michael William Carrol, now a contractor, but formerly a used car dealer in Calgary, gave evidence at pages 2863-2910. He identified Exhibit 237 which is the lease dated December 5th, 1952, with right of first refusal (p. 2863). He rented the property for a used car lot and used it as such from January 1st, 1953, until he sold it (p. 2864). Early in 1953 one or more real estate agents

or "people" contacted him in an effort to purchase the property (p. 2864) one of whom was Robinson. The first interview with Robinson was a month or several weeks before the sale took place (p. 2865). The final price of \$46,000.00 was arrived at after several telephone calls and meetings (p. 2866). Carrol did not know who the purchaser was until he signed the papers (p. 2866). The deal was made on April 16th, 1953 (p. 2867). Prior to April 16th, Carrol had approached Jack Hart with a view to buying the property from him, which approach was made through Hart's agents, Finlayson and Burneston. He says his first visit to them was several weeks before the sale was made to the Government, and after Robinson first spoke to him (p. 2868). At that time other people were also interested in buying from Carrol. Hart finally agreed to sell for \$35,750.00 and an option agreement dated April 15th, 1953, was signed (p. 2869). Carrol paid \$1,000.00 for the option (p. 2870). The option agreement was filed as Exhibit 238. Carrol's cancelled cheque for the aforesaid \$1,000.00 was filed as Exhibit 269. His lawyers in the deal were McLaws and McLaws of Calgary and the work was done in their office by Mr. Deyell (p. 2873). Carrol paid Robinson's commission (p. 2873). He stated that no Cabinet Minister or member of the Civil Service received any of the money (p. 2874).

James B. Finlayson, a contractor from Calgary, but formerly a partner in the real estate firm of Finlayson and Burneston, gave evidence at pages 2923-2947. He arranged the lease of this property from Hart to Carrol in December 1952 (p. 2923). He confirmed that Carrol approached him in 1953 to have a price fixed for the property (p. 2925). Hart fixed a price of \$35,750.00 and the option agreement, Exhibit 238, was prepared and executed (p. 2926). Finlayson prepared the document but it was checked by Patterson, Patterson & McPherson, solicitors at Calgary (p. 2926). He did not know until the deal was completed that the Liquor Control Board had purchased the property (p. 2928). Exhibit 272 was filed, being a letter to Finlayson from Halprin & Halprin, solicitors in Winnipeg, inquiring about an offer which they had made of \$28,000.00 for this property, an offer which Hart turned down (p. 2932). Finlayson said that in his opinion this property was much more valuable than the corner in the same block at 10th Street because it is on a through street and is a larger lot (p. 2933). He stated that when the original lease arrangement was made with Carrol there was no discussion of the price at which the property could be purchased (p. 2934). He said Carrol tried to get a price from him on several occasions but he could not give him any information because Finlayson did not know himself what price was placed on the property (p. 2935). As soon as he received the \$1,000.00 cheque from Carrol he went to Hart

and had him fix the price (p. 2936). He said that when Carrol gave him the cheque he said he was willing to pay "somewhere around \$30,000.00" (p. 2939). The understanding was that if an option could not be arranged at a satisfactory purchase price the cheque for \$1,000.00 would be returned to Carrol (p. 2939).

Mr. Jack Hart, retired and living in Calgary, gave evidence at pages 2911-2922. He is the Jack Hart referred to by previous witnesses and was the owner of this property, having bought it in 1951 from one Polsky for \$15,000.00 (p. 2911). Finlayson and Burneston were his agents, looking after the property (p. 2912). He had never met Mr. Carrol until today, April 4th, 1956 (p. 2913). He confirmed granting the option to Carrol and on the resulting sale Hart paid commission to Finlayson and Burneston (p. 2917). The figure of \$35,750.00 appearing in the option was not a negotiated figure, it was fixed by Hart (p. 2922).

John C. Gorman, a lawyer practising in Calgary as a member of the firm of Skene & Gorman, gave evidence at pages 2768-2789. On instructions from Jack Hart he prepared Exhibit 235 being transfer of land, Western Investments Limited to Carrol, dated April 22nd, 1953 (p. 2771). He then delivered the document to McLaws & McLaws, solicitors for the purchaser (p. 2773). By letter dated May 1st, 1953,

McLaws and McLaws forwarded Mr. Gorman settlement cheque after deducting \$1,500.00 paid as commission to Finlayson and Burneston (p. 2775). Mr. Gorman then paid all the money which he received to Mr. Hart, and his cancelled cheque was produced and filed as Exhibit 251. Until shown them in the witness box, Mr. Gorman had never seen Exhibit 237, being the lease with right of first refusal nor Exhibit 238, being the option agreement dated April 15th, 1953 (p. 2778). Mr. Gorman did not know of any Cabinet Minister or member of the Civil Service receiving any share of the money (p. 2779).

Roy V. Deyell, a lawyer practising in Calgary with the firm of McLaws, McLaws, Bancroft & Deyell, gave evidence at pages 3055-3065. He was with that firm in 1953 and acted for Carrol in connection with the sale of the 17th Avenue West Liquor Store site (p. 3056). He identified the transfer of land, Exhibit 235, which he received from Skene & Gorman (p. 3056). He also identified Exhibit 234, being transfer of land Carrol to the Crown, which document he prepared (p. 3057). The firm of Fenerty, Fenerty, McGillivray & Robertson acted for the Crown (p. 3057). He filed an exhibit number 284, being a letter written by him to Commission Counsel Morrow setting out how the money was paid (p. 3058). Mr. Deyell also acted for Ensign Stores Ltd. which purchased the property at the 10th Street corner of the same block. Ensign first purchased the four lots

on the corner and later purchased two adjoining inside lots to the west (p. 3060). For these two additional lots it paid \$22,000.00. Houses on them were salvaged and realized \$800.00; \$350.00 was paid for chattels, so that Ensign paid \$21,700.00 for the land alone (p. 3061). Transfer of land in respect of this transaction dated December 30th, 1953, was filed as Exhibit 285.

Kenneth I. Lyle, a real estate agent from Calgary, gave evidence at pages 2696 to 2724. Mr. Lyle said that it is usual for larger corporations to obtain an appraisal before finally purchasing property (p. 2698). He stated appraisal work is largely a matter of experience and judgment (p. 2706). When Mr. Helman suggested to him that he would not expect a corporation that was doing a lot of building to use an appraiser to appraise a building, the witness said that he would consider firms like Burns and Dutton or Bennett and White Construction to be experts in appraising buildings (p. 2707). Mr. Lyle was acting in 1953 for Shop Easy Stores who were interested in buying the property afterwards acquired as the site for the 17th Avenue Liquor Store (p. 2698) to be used as the site of a retail food store. He was retained by a Mr. Halprin.

His client was prepared to pay up to \$30,000.00 for a suitable site (p. 2698). Halprin instructed Lyle to make an offer of \$29,000.00 for the Liquor Store site (p. 2700). Lyle searched the title and decided that Jack Hart

was the man to interview (p. 2700). He failed to interview Hart who was in Florida but Lyle thinks that some relative or someone representing Hart said Hart would not be interested in his offer (p. 2701). The same party suggested that Hart might be interested in receiving an offer of approximately \$32,000.00, but Lyle was not authorized to offer that much (p. 2702). Mr. Lyle's client then purchased a property in the same block but at the corner of 10th Street and 17th Avenue West for \$36,750.00 (p. 2702). After selling the buildings on that site the net cost of the land was about \$30,000.00 (p. 2703). Mr. Lyle valued the liquor store site at \$30,000.00 (p. 2703). About eighteen months ago the value of corner lots increased considerably due to the activities of oil companies requiring service station sites (p. 2705). The witness said that if the owner of a property had any idea that the prospective purchaser was a School Board, City, Provincial Government or Dominion Government, the price goes up, and that also applied to oil companies (p. 2716). When asked if Mr. Halprin hired an independent appraiser he said he did not know whether he did or not, "I think he considered he was expert enough himself."

We have summarized the facts presented to us concerning the purchase of the 17th Avenue West Liquor Store site, Calgary. There was no evidence that any Cabinet Minister or any member of the Civil Service made any personal gain from the purchase of that property.

5. 9th Avenue West Liquor Store, Calgary.

This property was purchased by the Government from George C. Lancaster on June 16th, 1950, for the sum of \$50,000.00.

Mr. George C. Lancaster, who is retired and lives in Calgary, gave evidence on this subject at pages 2726-2763. He was, prior to the 16th June 1950, the owner of the 9th Avenue Liquor Store property located on the northeast corner of 9th Avenue and 5th Street West in Calgary (p. 2727). At that time Lancaster was engaged in the automobile tire service business, operating under the name Fisk Tire Service (p. 2741), and for some time he had been looking for another location for the service end of that business (p. 2741). When this property became available he started negotiations with the City to acquire it (p. 2741). These negotiations commenced late in 1949 (p. 2727) and he thought the agreement for sale was completed in May 1950 (p. 2727) and by that time had been approved by Calgary City Council (p. 2741). Lancaster paid \$28,000.00 for the property (p. 2730). The deal with the City was completed before Lancaster had any negotiations with the Provincial Government (p. 2741), although his final payment under his agreement with the City was not made until after he had made the deal with the Government (p. 2753). Negotiations with the Government commenced when Mr. C. A. MacNutt, who was then in charge of

the Liquor Control Board office in Calgary, phoned and asked if he was the Lancaster who owned the property (p. 2731). Mr. Lancaster thought the call to him was made early in May but he adds that it might have been earlier than May (p. 2731). He said MacNutt told him that he was recommending or suggesting several sites to his superiors in Edmonton and he had no idea whether or not they would be interested in this property but he asked Lancaster's permission to tell them it could be bought (p. 2732). He told Lancaster it was required for a liquor store (p. 2732). Lancaster said he did not indicate to MacNutt at that time that the property could be bought, but did tell him that he, Lancaster, had another purpose in mind for the property (p. 2732). Following that conversation the witness had a meeting, the date of which he could not recall, with MacNutt and Arthur Arnold in MacNutt's office in Calgary at which time the proposed sale was discussed (p. 2733). Lancaster said he was not anxious to sell the property and he asked \$55,000.00 for it, but finally quoted a price of \$50,000.00 (p. 2733). At the meeting Arnold said the price was "terrible" (p. 2735) but Lancaster said that he was not anxious to sell and he told them that \$50,000.00 was his price and if they were not interested "why, that was it" (p. 2735). At the request of Arnold, he submitted a rental proposition in the form of a letter to the Honourable D. B. McMillan dated May 16th, 1950, filed as Exhibit 244. He said the sale went

through at \$50,000.00. Transfer of land, Lancaster to the Crown, is dated June 16th, 1950, and was filed as Exhibit 245. Lancaster stated that no Cabinet Minister or any member of the Civil Service received any share of the profit he made on the sale of the building (p. 2740).

Lancaster told Mr. Helman that the City of Calgary purchased the property across the street to the west for use as a parking lot for \$1,000.00 per foot frontage in 1954 (p. 2762). He admitted to Mr. Milvain that several buildings had been constructed on 9th Avenue in the interval (between 1950 and 1954) which increased the value of 9th Avenue property "a whole lot" (p. 2762).

Mr. Charles A. MacNutt, Manufacturers Agent from Calgary, gave evidence at pages 2855-2862. In 1950, Mr. MacNutt was Supervisor of Operations in Southern Alberta for the Alberta Liquor Control Board (p. 2855). He found it necessary to secure an improved location for the main liquor store in Calgary and as a result appraised several pieces of property which would be adaptable and decided the Lancaster property would be "the one most useful for our purpose" (p. 2856). When he first learned of the 9th Avenue property he understood it was owned by the City and was available for approximately \$29,000.00, but later he learned that it was owned by Lancaster (p. 2856). He passed on that information to Mr. Arnold and at Arnold's request he arranged the

above mentioned meeting with Lancaster. He thought the meeting was about May 4th, 1950 (p. 2857). No price was agreed on at that time but the asking price was \$55,000.00 (p. 2857). MacNutt had nothing to do with the actual purchase of the property (p. 2857). He said he knew of no money which went to any Cabinet Minister or member of the Civil Service as a result of this purchase and he did not receive any himself (p. 2858).

Mr. Arthur Arnold, Deputy Minister of Public Works, gave evidence and filed a written memorandum on this subject as Exhibit 252, which we quote in full:

" Re: Central Liquor Store Building, 5th Street and 9th Avenue, Calgary.

Before the purchase of this building the Alberta Liquor Control Board Store and Warehouse were located in the Burns Foundation Building on 9th Avenue. The Board occupied this building from May 15, 1929, on a rental lease agreement. The last lease agreement signed was dated October 1, 1947, and covered a five year period. This means that this lease expired on September 30, 1952.

In the fall of 1949, it was realized that it would be necessary to find alternative accommodation for the Liquor Store in Calgary. The growing population ruled out the existing rented premises as being suitable for acquiring and remodelling,

"as the building did not lend itself to future expansion.

However, nothing was definitely done by this Department until April, 1950, when, as Superintendent of Buildings, I was requested to report on several buildings, addresses and locations had been provided, in part by the Liquor Board and in part by advertisements for sale.

I cannot definitely recall whether this direction came from the Honourable Mr. MacMillan, Minister of Public Works, or the Provincial Treasurer, as there had been several discussions with regard to the need for a site for the Liquor Store in Calgary.

At the time I did not realize there was any immediate emergency in the matter, and was attempting to make these reports in the course of normal business visits to Calgary.

The Premier requested me to expedite these reports to him, because Mr. McNutt, Superintendent, Alberta Liquor Control Board, Southern Area, was pressing for a decision. Accordingly, I went to Calgary specifically to finalise my report. I arrived in Calgary on the evening of May 3rd, and remained there the 4th and 5th. On the 4th of May, as far as I can recall, Mr. McNutt introduced me

"to Mr. Lancaster, in Mr. McNutt's office, and stated Mr. Lancaster was the owner of the piece of property which might be suitable for the Liquor Board's requirements. I inspected the property with Mr. Lancaster, Mr. McNutt and Mr. C. J. Paul, Supervisor of Maintenance for the Department of Public Works, in Calgary.

There had been some preliminary discussions as to the possible rental or selling price.

On my way back to the Department's Office in Calgary, Mr. C. J. Paul informed me that it was public knowledge that Mr. Lancaster had recently bought the property for \$28,000.00.

I had further conversations with Mr. Lancaster, in Mr. McNutt's presence - and pointed out to him that I had been informed he had only paid \$28,000.00 for the property recently. Mr. Lancaster's attitude was that it was no concern of the Government and if we wanted his property we would have to pay his price.

His asking price, at the time, was \$60,000.00 with an alternative rental proposition.

Of all the properties I saw, notwithstanding the excessive profit which Mr. Lancaster was probably going to make, I considered this property as being the best location and the building was the

"most suitable of any I had seen for adaptation for our purposes and accordingly stated so to the Premier in my report of May 10th when reporting on the 17 properties inspected by me and I stated in this report that the asking price for this particular property was high, and had recently been purchased for \$28,000.00, but if the property could be negotiated to the satisfaction of the Government it was the best of all the locations.

The Premier subsequently called me to his office and a discussion took place as to prices and relative values of all the properties I had seen.

I was asked to separate the report on the Lancaster and Jenkins properties from the rest of the report and to submit it again. This I did on the 12th of May.

It was then decided a written offer should be obtained from Mr. Lancaster quoting his best terms.

A written offer was received from Mr. Lancaster, addressed to the Honourable Mr. MacMillan, Minister of Public Works, dated May 16, 1950, in which Mr. Lancaster stated that at the request of the Board he was submitting an offer.

"This offer quoted the sale price as \$50,000.00, as against previous figure of \$60,000.00.

I realized that I had an old building to remodel but the foundation, walls, floors and steel girders provided a basic frame which we could not replace at construction costs, at that time, for less than approximately \$20,000.00.

The land consisted of 104.65 ft. facing on 9th Avenue and 130 ft. on 5th Street West. The legal description of the land reads:

Part of Lot 34, and all of Lots 35 to 38,
Block 50, Plan A1, Calgary.

It should be remembered that in selecting this building for a Liquor Store it was necessary to give very serious consideration to its location. We required it to have adequate parking facilities and be strategically located in order to provide convenience to its customers. It should not be adjacent to any religious Institution, or hospital.

I have here for your inspection photographs of the Central Liquor Store Building at the time of purchase.

We eventually purchased the building and land for \$50,000.00 on June 27, 1950. This price,

"notwithstanding the amount paid for the property by Mr. Lancaster, is in my opinion, a fair and just price. I should like to mention at this time that the City of Calgary paid \$100,000.00 on July 19th, 1953, for Lots 21 to 24, in Block 50, and the land they purchased is on the N.W. corner of 5th Street and 9th Avenue, opposite to the land we purchased, which is on the N.E. corner of the intersection.

After we renovated the building, making it suitable for a Liquor Store, the Alberta Liquor Control Board moved their Store from the Burns Foundation Building. They continued to hold the rented premises in the Burns Foundation Building as a Warehouse. The Central Liquor Building opened December 15, 1950. I have here for your inspection photographs of the Central Liquor Store following its renovation by this Department."

The two reports made by Mr. Arnold to the Premier (referred to in Exhibit 252) dated May 10th, 1950, and May 12th, 1950, were filed as Exhibits 253 and 254. Mr. Arnold said that he and MacNutt looked over all of the properties referred to in Arnold's report to the Premier and these inspections were spread over a period of two or three months and perhaps even three or four months (p. 2807). He stated he

knew nothing about the property being up for sale by the City at an earlier date (p. 2803). His first conversation with Lancaster concerning this property was when he met him at the above mentioned meeting in MacNutt's office (p. 2809). He examined the building on several occasions before it was purchased and it was also examined by Mr. Cliff Paul, Maintenance Foreman for the Department in Calgary (p. 2803). No outside appraisal was obtained (p. 2803). The first time Arnold inspected the building, Mr. Paul was with him and Paul told him at that time Lancaster had bought the property for \$28,000.00 (p. 2810). In examining the building Arnold said he was not endeavouring to find out the commercial value but simply whether it would be suitable for the use to which it was to be put by the Government (p. 2813).

We have summarized the facts presented to us concerning the purchase of the 9th Avenue Liquor Store, Calgary. There was no evidence that any Cabinet Minister or any member of the Civil Service made any personal gain from the purchase of that property.

5. Chestermere Lake Gaol Site.

This property was purchased by the Government from Samuel Diamond in August 1954.

Mr. Arthur Arnold, Deputy Minister of Public Works, gave evidence on this subject at pages 2952-2985, and filed a written memorandum as Exhibit 273 as follows:

" Re: Purchase of Chestermere Jail Site.

Description:

It was announced in the Calgary Herald, March 14, 1953, that the Government was considering erecting a jail in the Calgary area.

I was requested by my Minister, the Honourable A. J. Hooke, to accompany him, the Attorney General, the Honourable Lucien Maynard, and Mr. H. J. Wilson, Deputy Attorney General, on July 30th, 1954, for the purpose of inspecting several sites for a jail location in the Calgary area.

The first site visited was the Chestermere property, the legal description of which was:

Part S.W.	1/4-15-24-28-W.4th
Part Sec.	15-24-28-W.4th
Part Sec.	22-24-28-W.4th

Total acreage - 881.9 acres

A casual inspection of the buildings was carried out. We then inspected the land and determined its boundaries, and then proceeded in the direction of Calgary on the No. 1 Highway.

We inspected the second site, which was near Forest Lawn. There were no buildings on this site.

"We proceeded to Calgary. After lunch with Mr. Church, we visited his property, which was four miles North of Calgary. Upon completion of the inspection of this property we went back to our office in Calgary and had a general discussion on all three properties inspected.

I learned on the occasion of this visit that the asking price for the Chestermere site was \$160.00 per acre in comparison with \$350.00 per acre for the property at Forest Lawn, and I have correspondence from Mr. Church advising he required \$350.00 per acre for his property.

Since there were no building improvements on the Church property or the Forest Lawn property, I delegated Mr. Brettelle, and Mr. J. C. Paul, of my staff, to inspect and give me a report on the condition, and estimated value, of the buildings at Chestermere.

It was the general opinion of the group, Mr. A. J. Hooke, Mr. L. Maynard, Mr. H. J. Wilson and myself, that the first site looked at, that is Chestermere, was the most suitable, everything considered.

The matter of obtaining a lower price was discussed.

" I was informed on August 12, 1954, by the Secretary to my Department, Mr. S. E. Kenworthy, that he had received documents and instructions during my absence from my office from the Hon. A. J. Hooke to complete the purchase of what is now known as the Chestermere Lake property."

Mr. Arnold also submitted as Exhibit 277 the complete Department of Public Works file in respect of the Chestermere Lake property. Exhibit 277A was produced from that file, being a letter dated July 12th, 1954, written by Millard & Woolliams, Barristers of Calgary, to the Honourable Lucien Maynard as follows:

"The Honourable Lucien Maynard,
North Edmonton,
Edmonton, Alberta.

Dear Mr. Maynard:

With regard to the proposed gaol to be located in the Calgary district, we have clients who have an ideal site for same. The property consists of 890 acres of real good farm land situated in one of the best producing areas. This land is all fenced and cross-fenced with three and four strand barbed wire fencing, the cost of which would be approximately \$5,000.00.

For your information we enclose the following documents:

1. Aerial photograph of the area on which the land is located.

- "2. Topographical map of the area.
3. Appraisers valuation of buildings.

The land is that portion of Sections 15 and 22, Township 24, Range 27, West 4th Meridian in the Province of Alberta, located between No. 1 Highway and the new Trans Canada Highway, lying to the west of Chestermere Lake, consisting of 890 acres more or less. The site would appear to be ideal. The land is practically all broken, and most of it is in crop at the present time.

There are numerous other assets such as three good water wells, cased to a depth of 75' and located - one in the house - one in the barn and one in the field. There is also good spring water on the land. This land is serviced with electricity 10 KVA by Calgary Power and the house is equipped with running water and sewerage and is fully modern. Sceptic tanks are located about 400' away.

The location of this parcel of land, the soil condition, the improvements thereon, and accessibility would appear to make this property an excellent location for the proposed gaol. Our clients are prepared to sell this property, including all improvements, for \$160.00 per acre. All that they would retain would be this year's crop and the right to harvest same.

Kindly advise whether or not you are interested, and if you are, when arrangements could be made to have you or some other Governmental officer visit same and ascertain its suitability.

Yours very truly,

MILLARD & WOOLLIAMS,

Per: MacD. Millard "

Exhibit 277D was also produced from the file being a letter dated July 19th, 1954, from George E. Church to the Deputy Minister of Public Works as follows:

"

Balzac, Alberta,
July 19th, 1954.

Deputy Minister of Public Works,
Parliament Buildings,
EDMONTON, Alta.

Dear Sir:

I notice from a report in the press that the Provincial Government is interested in securing land near the city of Calgary for a new provincial jail or prison farm. I am part owner of a section of land near the city limits on Centre Street north and thought you might be interested in securing this property.

We feel this land is worth \$350.00 per acre but would be willing to accept a lower price for cash. This 640 acres is situated on S15-T25-R1-W5th. If you are interested in this land and happen to be in Calgary you could contact me at 125 11th Ave. East. I would be glad to show you the property.

Yours truly,

Geo. E. Church.

"

Mr. Arnold did not think there was a letter received in connection with the Forest Lawn property (p. 2966). He said that other general areas had been considered for a gaol site but had been "ruled out" (p. 2967). After the inspection trip of July 30th, 1954, referred to in the above memorandum, Arnold said the parties who made the inspection were agreed that the Chestermere Lake property "was by far superior to what we had seen" (p. 2967). The property is about seven or eight miles from Calgary (p. 2969). Mr. Church was the only landowner seen on the inspection trip

(p. 2969). Mr. Arnold had two of his men, namely Brettelle and Paul, inspect the buildings on the Chestermere property and report on the buildings and other facilities. Their report was filed as Exhibit 277E. The Department of Public Works had nothing further to do with the negotiations after that (p. 2970). Arnold did not know Samuel Diamond (p. 2973). He said that to his knowledge no Cabinet Minister or any member of the Civil Service, including himself, received any share of the purchase price of this property (p. 2973). When asked how he felt about the asking price of \$160.00 per acre, Arnold said he thought the price was fair, that when he received the report on the buildings he thought they could get the price down a little and said they did (p. 2974). Arnold stated no survey of the Calgary area was made for the purpose of locating suitable gaol sites before the announcement was made in the press that the gaol would be built in the Calgary area (p. 2978).

Mr. H. J. Wilson, Q.C., Deputy Attorney General, gave evidence at pages 2986-3004. Mr. Wilson accompanied the Honourable Attorney General, the Honourable Mr. Hooke and Mr. Arnold on the inspection trip of July 30th, 1954 (p. 2986). Provincial gaols are administered by the Attorney General's Department and Mr. Wilson went on the inspection trip to give his views on the suitability of the site (p. 2986). Mr. Wilson had nothing to do with the acquiring of the sites or

negotiating for them and had no idea of land values at all (p. 2987). He said that of the three sites inspected there was no question in his mind that the Chestermere site was the most suitable for gaol purposes (p. 2987).

The following evidence was given by Mr. Wilson at p. 2987:

"Q And what were the most salient features of that site so far as you were concerned?

"A Well, in my view, the jail should be fairly near Calgary for the reason that most of our committals in the south come from the Calgary area and there is the question of the transportation of prisoners. Also, we have to have an all weather road so it is accessible at all times and preferably we thought we should have a site which would be on the way to either Bowden or Ponoka because many of the prisoners have to go to either of those institutions at times.

"Q And this particular --

"A So, this particular site seemed to fit into all of those requirements. Furthermore, the buildings were on a high piece of ground and the visibility of the whole area was quite good which is of some interest in a jail site because from the buildings you could see the whole of the property pretty well.

"Q In other words watch working parties and so on?

"A Yes. The land seemed to be fairly level. There were no deep gullies or anything and from that point of view it seemed to be the most desirable site."

Mr. Wilson said that the area of the site was adequate for the proposed institution (p. 3003).

Mr. Lucien Maynard, Q.C., former Attorney

General of the Province gave evidence at pages 3005-3050 and 3065-3090. At the time of purchase of the Chestermere Lake property, Mr. Maynard was Attorney General (p. 3010). The announcement in the Calgary Herald of March 14th, 1953, that it was the intention of the Government to build a Provincial gaol in the Calgary area, resulted from a statement made by the witness in the Legislature (p. 3010). Mr. Maynard thought that an appropriation had been passed by the Legislature in 1953, which had not been used, and another appropriation was passed in 1954 of \$100,000.00 (p. 3011). In the fall of 1953 he said it seemed evident that an additional institution was required and "we had always thought that in the event of a new gaol being constructed it should be in the vicinity of Calgary" (p. 3012). The witness said there was further discussion of the matter in the press in 1954 (p. 3012). He identified the letter from Millard & Woolliams, Exhibit 277A, and said it came in unsolicited (p. 3013). He thought it was sent in as a result of publicity (p. 3013). The George E. Church letter was addressed to the Department of Public Works (p. 3013). No other letters were received respecting sites in the Calgary area (p. 3014). Mr. Maynard did not know or suspect who Millard's clients were, and he did not ask him (p. 3014). The witness was a member of the inspection party above

mentioned (p. 3014). In addition to the letters, Mr. Maynard had previously received a proposal from Mr. Louis Diamond regarding a site at Forest Lawn, which he had turned down, but he suggested the inspection party also have a look at this site (p. 3014). He said the inspection group agreed that the Chestermere Lake property was the best site (p. 3016). Upon Mr. Maynard's return to Edmonton he stated the matter was discussed by the Cabinet and a decision was reached to make an attempt to acquire the Chestermere Lake site at a lower figure than the asking price (p. 3016). After the Cabinet meeting Honourable Mr. Hooke, Minister of Public Works, asked Mr. Maynard to carry on the negotiations because Mr. Hooke was particularly busy at that time (p. 3017). From that time on Mr. Maynard's Department carried on the negotiations (p. 3017). These negotiations commenced about August 3rd, 1954 (p. 3018).

Exhibit 277F was filed, being a telegram dated August 10th, 1954, from MacDonald Millard to Lucien Maynard, Attorney General, and saying:

"CLIENT WILL ACCEPT ONE HUNDRED AND FORTY-FIVE
PER ACRE AS LOWEST FIGURE FOR LAND STOP FULL
DESCRIPTION AND FURTHER PARTICULARS BEING MAILED
TOMORROW."

At page 3018:

"Q Now can you tell us what transpired from the date of your Cabinet meeting on August 3rd up to that date? (August 10th).

"A Well I had several telephone calls with Mr. Millard and we were endeavouring to reach an agreement on price of \$125.00 an acre but we were not successful in arriving at that figure or have Mr. Millard accept that figure and we finally had Mr. Millard agree to accept \$145.00, or he agreed to accept \$145.00 in discussions and I think he indicated that would be the lowest his clients would be prepared to accept. I asked him to put that in writing so I could have a firm proposal to submit to the Government and that was done."

Mr. Maynard said the matter was again discussed at a Cabinet meeting and as a result the Cabinet agreed to accept the property at that price (p. 3019). A letter from Millard & Woolliams dated August 11th, 1954, confirming the telegram of August 10th, was filed as Exhibit 277G. Filed as Exhibit 277H was a memorandum dated August 12th, 1954, from Mr. Maynard to Mr. Hooke asking him to prepare the necessary special warrant (p. 3021). As a result, Order in Council 1147/54 was passed (Exhibit 277I) approving the purchase and making provision for additional funds to make payment.

Mr. Maynard then wrote a letter to Mr. Millard (Exhibit 277J) dated August 18th, 1954, as follows:

"

EDMONTON, Alberta,
August 18, 1954.

Dear Mr. Millard:

In reply to your letter of August 11th, I wish to confirm arrangements for the purchase of 881 acres of land in the Chestermere Lake area as described in your letter for \$145.00 an acre. A special warrant was passed yesterday for the purpose of paying for the land. As soon as you are ready to deliver clear Title in the name of the Crown, I will see to it that cheque for the purchase price is forwarded to you as requested in your letter of August the 11th.

Yours very truly,

LUCIEN MAYNARD

Mr. MacDonald Millard, Q.C.,
407 Insurance Exchange Building,
CALGARY, Alberta.

"

Mr. Maynard said that as at August 18th, 1954, he did not know who Mr. Millard's clients were, and at that date did not know Samuel Diamond and had never met him (p. 3025). He stated no searches were made of the title to the property because the Government does not pay out any money until title in the name of the Crown is delivered (p. 3026). Millard & Woolliams had requested that the cheque for the purchase price be made payable to them (p. 3028) and to make that possible Western Securities Limited, the registered owners of the property, signed an authorization to make payment accordingly (p. 3030 and Exhibit 277L). Exhibit 287 was filed, being cheque of the Province of

Alberta in favour of Millard & Woolliams in the sum of \$127,875.00, dated August 18th, 1954, endorsed by Millard & Woolliams and deposited in the Bank Manager's special account in the Royal Bank, Third Street West Branch, Calgary, on August 27th, 1954 (p. 3086).

A transfer of land, Western Securities Limited to the Crown, covering the Chestermere Lake land, and dated August 18th, 1954, was filed as Exhibit 282.

Mr. Maynard further testified that in the fall of 1954, the Government was receiving complaints about the proposed building of a gaol at Chestermere Lake (p. 3031). Resolutions of protest were passed at meetings held in the district and copies sent to the Premier and to the Attorney General (Exhibits 277M, 277N, p. 3033-4). There was a great deal of newspaper publicity as evidenced by Exhibits 278A-L, and articles listed (pp. 2997-3000). As a result of the letter to the Premier a written statement about the situation was prepared by Mr. Maynard and the Public Works Department for the use of the Premier. The Premier then wrote a letter to the complainants dated September 24th, 1954 (Exhibit 277-0) to which was attached a copy of the statement prepared for the use of the Premier (pp. 3036-3047). On January 27th, 1955, the Premier made a statement to the press that the gaol would be set up in a different location (copy of the

press release is Exhibit 277P, p. 3047) and reporting the sale of the Chestermere site and the purchase of the Spy Hill site. Mr. Maynard said the change was made because of the public agitation in the Chestermere Lake area and because of the fact that the Chestermere Lake property was sold for what the Government paid for it (p. 3048).

Under cross-examination by Mr. Milvain, Mr. Maynard testified that he first heard from Mr. Louis Diamond about the Forest Lawn property in Calgary when Diamond phoned and said he had a piece of property at Forest Lawn in which the Government might be interested (p. 3067). Mr. Maynard had known Louis Diamond for two or three years, but had never met the brother, Sam Diamond (p. 3068). He also told Mr. Milvain that before completing the deal with Millard no inquiries were made from real estate agents in Calgary with respect to the price of the property (p. 3072). No inquiry was made with respect to recent sales in the vicinity (p. 3072).

The following questions by Mr. Milvain and answers appear at pp. 3073-3075:

"Q And you four gentlemen, Mr. Hooke, Mr. Arnold and Mr. H. J. Wilson had examined the property?

"A Yes.

"Q Did anyone else examine the property?

"A Maybe, I do not know.

"Q Did anyone else examine it from the point of view of assessing the value of the land as distinct from the buildings?

"A Not to my knowledge.

"Q Did any of the four of you consider yourself an expert in the valuation of real estate?

"A Well, now, Mr. Milvain, before I answer that question I think I better put you straight. We were out to buy, not a farm, piece of farm property, had we been out to buy a piece of farm property then I think all the checks that you mentioned would have been in order.

"Q Yes?

"A And undoubtedly they would have been made but insofar as the purpose for which we were going to buy the property I feel, and I say this in all humility, that Mr. Wilson and myself, representing the Attorney General's Department, were more expert in ascertaining whether the property was suitable for the purposes for which we wanted it than any farmer in the area.

"Q Oh, I agree with you on that, you would know better than a farmer whether it would make a good gaol?

"A Whether it was suitable for our purposes.

"Q That is right, but would you, better than a farmer know what the value of the land was?

"A As farm purposes, no.

"Q As farm land?

"A But for our purposes, yes.

- "Q Of course the use to which the land was to be put in, you are buying it, it was farm land, the vendor had farm land to sell?
- "A Well, yes, but then we were not buying farm land.
- "Q No, but that is all that the vendor had to sell was farm land?
- "A That is right but we were interested in something more than farm land.
- "Q And don't you feel that if after having satisfied yourself that the land will suit your purposes that some investigation should be made to find out whether or not you are paying a reasonable price for it as a going commodity?
- "A Yes, that question was considered.
- "Q Yes?
- "A The question of valuation was considered by the four of us and we related the prices on the property asked for at Chestermere in relation to the price asked for in Forest Lawn and for the Church site. Now, when we were discussing valuation on the three, on the prices asked for the three different properties there was one among the four that made the statement that we would be far better to pay \$350.00 an acre for the Chestermere site than \$150.00 an acre for the Church site. That is how we valued the Chestermere site insofar as the purposes for which we wanted it was concerned.
- "Q That is right.
- "A We felt it was a highly desirable piece of property for a gaol site."

The following questions by Commission Counsel and answers by Mr. Maynard appear at pp. 3049-50:

"Q I see. Did you personally obtain any share of any of the money that passed on either the Chestermere site purchase or the Spy Hill property?

"A No.

"Q Have you any personal knowledge of any member of the Government or of the Civil Service receiving any share of the proceeds of either of those transactions?

"A No.

"Q Did you personally tip off Samuel Diamond or any other person in connection with either of these sites?

"A No.

"Q Have you any knowledge of any one in the Government tipping off --

"A No.

"Q -- or any private individual?

"A No, none."

Mr. John B. O'Connor, a lawyer practising in Calgary, gave evidence at pages 3090-4015. Members of the O'Connor family have a private investment company called Western Securities Limited (p. 3090) and owned land now called Chestermere Lake gaol site, which at that time was known as Tara Farms (p. 3091). On June 11th, 1954, an option to purchase this property at a price of \$81,000.00 was granted to Sam Diamond (p. 3092). The option document was filed as Exhibit 288. Diamond paid \$1,000.00 for the

option. When negotiating for the option the witness said he was advised by Sam Diamond that the latter was thinking of building a golf course on this property (p. 3095). In the negotiations O'Connor asked for more money than he finally obtained, but \$81,000.00 was arranged (p. 3095) and O'Connor was satisfied with that figure (p. 3096). He told Mr. Milvain that he regarded the price of \$81,000.00 "a good solid price" (p. 4002). At the time of negotiations, Diamond indicated to O'Connor that he was acting for a syndicate in Vancouver (p. 4008).

Subsequently, Diamond exercised the option to purchase (p. 3097). Mr. O'Connor said he does not know of any money going to any Cabinet Minister or member of the Civil Service as a result of this transaction (p. 3099).

Mr. MacDonald Millard, a lawyer practising at Calgary, gave evidence at pages 4016-4036 and 4291-4310. Mr. Millard was a member of the firm of Millard & Woolliams in 1954 and acted for Mr. Sam Diamond. Diamond instructed Millard to write the government offering the Chestermere Lake property as a gaol site, and Millard chose to write

Mr. Maynard (p. 4017). The witness stated that Diamond knew the Government was looking for a gaol site. Millard wrote the letter of July 12th, 1954, Exhibit 277A quoted above. This letter was the first contact Millard had with the Government on behalf of Diamond (p. 4018). Following the letter there were several telephone calls between Mr. Maynard and Mr. Millard (p. 4018) and a price of \$145.00 per acre was finally arrived at and confirmed in Millard's telegram to Maynard (Exhibit 277F) followed by confirming letter (Exhibit 277G). Millard requested that the cheque covering the purchase price be sent to him in care of the Royal Bank, Calgary, (p. 4019). He identified the cheque (Exhibit 287) as the cheque which was sent. He signed the endorsement on this cheque for Millard & Woolliams (p. 4020) and turned the cheque over to the Royal Bank (p. 4022) where Diamond did his banking and where arrangements had been made to do any necessary financing in connection with this deal (p. 4021). After the unearned increment tax and the balance owing to O'Connor were paid, the remaining money was placed in Diamond's account (p. 4022). Mr. Millard said he was not aware of any of the money being paid to any Cabinet Minister or member of the Civil Service (p. 4022). The witness produced a draft syndicate agreement, unsigned, and dated June 11th, 1954, which was filed as Exhibit 291. He prepared that document on instructions from Mr. Diamond

(p. 4023). He said it was not drawn on June 11th and was probably prepared by him either in late June or in July 1954 (p. 4030). Millard did see a signed copy of the document but could not remember the names of the people who had signed but he understood they were friends and relatives of Mr. Sam Diamond (p. 4024).

Under cross-examination by Mr. Milvain, Millard produced his complete file on this subject which was filed as Exhibit 328. He said he was not a member of the syndicate, nor was any Cabinet Minister or government official (pp. 4292-5). He stated that when Diamond first gave him instructions with respect to the syndicate, Diamond offered to bring Millard in as a member but Millard declined. He said he was not in a position to join (p. 4299). When the balance of the purchase price was paid into Diamond's account at the Royal Bank, Diamond gave Millard a cheque on that account for \$2,500.00, \$500.00 of that amount being for legal fees and \$2,000.00 as a personal loan (p. 4304). Diamond did not give Millard any other cheques or monies for the purpose of passing them on to any other persons (p. 4304). Diamond did not take any security for the loan of \$2,000.00, and he did not take a note. The loan has not been repaid and interest on the loan was not discussed (p. 4310). Millard said that he is expected to repay it (p. 4310).

Mr. Louis Diamond of Calgary gave evidence at pages 4213-4224. The witness is now retired and is a brother of Sam Diamond of West Vancouver (p. 4213). He is not familiar with the Chestermere Lake site (p. 4013) but he is familiar with property at Forest Lawn and held an option to buy a half section of land in that area, being the West Half Section 14-24-29-West 5th Meridian (p. 4213). He produced and filed as Exhibit 320 a receipt for \$1,200.00 dated November 17th, 1953, given to S. and L. Diamond by General Realty, being a receipt for money paid for the option. The initials S. and L. refer to Sam and Louis Diamond (p. 4214). The Diamonds planned to use the property for a housing project and shopping centre (p. 4215). The option was for one year (p. 4216) and the purchase price was about \$100.00 per acre (p. 4215). After the witness read in the papers about the establishment of a gaol in the vicinity of Calgary he contacted Mr. Maynard by telephone at the Palliser Hotel in Calgary about the middle of May 1954 (p. 4216). He said Mr. Maynard did not sound very enthused about the Forest Lawn property but Maynard said if he changed his mind he would phone Diamond (p. 4217). No price was mentioned at that time (p. 4217). Diamond said he had known Mr. Maynard for about three years and had talked to him at the race tracks (p. 4220). Diamond owned race horses in the late 1920's or early 1930's

(p. 4220).

About two weeks after his first telephone call to Mr. Maynard, Diamond phoned again, and this time Mr. Maynard went out with Diamond to look at the property (p. 4217). Diamond quoted a price of \$350.00 per acre (p. 4217). Mr. Maynard said he was definitely not interested (p. 4218). He further stated that his brother Sam invited him to take a financial interest in the Chestermere property but he turned it down and never had any interest in it (p. 4218). The witness said his brother did not tell him who was involved in the Chestermere Lake syndicate (p. 4224).

Mr. Samuel Diamond, who resides in West Vancouver, gave evidence at pages 4310-4348 and 4349-4373. He was associated with his brother Louis in the above mentioned Forest Lawn property deal (p. 4311). He said when that option was taken they had in mind an housing development (p. 4311) and he produced a letter dated February 11th, 1954, written by their agents, General Realty, to the Honourable R. H. Winters, Minister of Public Works, Ottawa, dealing with the proposal (Exhibit 329). Mr. Hoover, Calgary representative of Central Mortgage and Housing Corporation did not approve the scheme (p. 4315). The Diamond brothers each had a 50% interest in the Forest Lawn scheme (p. 4329). The witness said he also made

efforts to develop the property as a commercial and warehouse subdivision and exchanged correspondence with Canadian National Railways on the subject of spur trackage in July 1954. This project did not materialize. The witness said he had nothing to do with Mr. Maynard or the Provincial Government in connection with the Forest Lawn property (p. 4316) but he did learn from his brother that the property had been shown to the Government and it was not interested (p. 4316).

The witness Samuel Diamond identified Exhibit 288, being the option on the Chestermere Lake site which he obtained from O'Connor (p. 4316). He said the purpose in obtaining the site was to use it for a golf course and small residential holdings (p. 4317). Diamond stated that he met O'Connor on the street and after discussing the drive-in theatre at Chestermere, O'Connor said he had this farm for sale, and in that way negotiations started (p. 4318). He said about O'Connor's first asking price: "I believe he had nerve enough to ask me \$125,000.00" (p. 4369). The figure of \$81,000.00 was finally arranged (p. 4318). Diamond said it was an excellent buy at that price (p. 4319). The witness stated that at the date of the option he had no knowledge that the Government was looking for a gaol site in Calgary (p. 4319). Later he went to Millard's office and asked him to submit a proposal to the Government and as a

result Millard's letter of July 12th, 1954, was written to Mr. Maynard (p. 4319). Diamond said he had never known nor had he seen Mr. Maynard until the Public Accounts Committee Hearing about a year ago (1955) (p. 4320). He gave the names of the syndicate members (p. 4321) as follows:

Samuel Diamond
Mrs. Samuel Diamond
George Miller
Mrs. George Miller
Ethel Diamond
Jerry Levey
Barbara Diamond
Diana Woolfe

The witness and his wife each held two of the ten units in the syndicate and all other persons held one unit each (p. 4321). He said that none of the syndicate members was holding any of the units on behalf of any Cabinet Minister or member of the Civil Service (p. 4321). At page 4322 he confirms the banking arrangements and the handling of the cheque from the Government as outlined by Mr. Millard.

Diamond stated that no Cabinet Minister or any member of the Civil Service received any of the money realized from the sale (p. 4323). He also stated that he had not received any advance notification from any member of the Government that they might be interested in acquiring a site near Chestermere (p. 4323).

Mr. Diamond filed as Exhibit 331 an executed copy of the syndicate agreement above mentioned. He also filed, as Exhibit 332, nine cheques drawn on the Samuel Diamond trust account operated by him at the Royal Bank of Canada, Third Street West Branch, Calgary, and his bank statements with respect to that account (Exhibit 333, p. 4362). One of the nine cheques was for the sum of \$2,500.00 dated August 27th, 1954, and payable to Mr. Millard (p. 4327) being the cheque referred to in Mr. Millard's evidence. The other eight cheques are dated December 29th, 1955, and evidence the distribution of the remaining money to the members of the syndicate; and none is payable to any Cabinet Minister or member of the Civil Service (p. 4328).

Mr. Carman Ellis, a farmer who resides in Calgary, gave evidence at pages 4037-4061 and 4066-4091. He came to the Chestermere Lake district with his family in 1912 and has farmed in that area ever since. He owns about 900 acres of land across the Trans-Canada Highway from the Chestermere Lake gaol site. He said that the Chestermere Lake gaol site is a good farm (p. 4039). In 1954 he sold 40 acres of his land in the same area for \$60.00 per acre (p. 4041) but this was involved in the settlement of a partnership affair (p. 4042) and in the opinion of the Commission this evidence is not very helpful (pp. 4052-56). Two or three years ago he offered to sell his farm across the highway from the gaol site for \$100.00 per acre (p. 4049).

Gordon E. Irving, manager of Canadian Allis-Chalmers at Calgary, gave evidence at pages 4374-4380. His mother Myrtle Irving owns land in the Chestermere Lake district. She sold land in that vicinity to Chestermere Development Limited by transfer dated February 28th, 1955, for \$5,000.00 plus shares in the company (pp. 4374 & 4379). The acreage involved was 25.3 and the land was purchased for use as a drive-in theatre (p. 4395). He said "it was straight farm land" (p. 4375). He stated that for land fronting on the highway to a depth of 300 feet therefrom, his mother is now asking \$1,200.00 per acre, and the witness feels that her land other than highway frontage, is worth \$100.00 per acre (p. 4376). He said that other land, formerly owned by Ellis, and near the drive-in theatre, was sold recently for \$1,000.00 per acre with four acres involved (p. 4377). He further stated he did not know of any parcels consisting of more than a quarter section which have sold for \$100.00 per acre or more.

Mr. Eldon M. Woolliams, a lawyer practising in Calgary gave evidence at pages 4348-4349. He was formerly a partner of Mr. MacDonald Millard but he said he had nothing to do with the Chestermere Lake gaol site transaction.

We have summarized the facts as presented to us concerning the purchase of the Chestermere Lake gaol site. There was no evidence that any Cabinet Minister or

any member of the Civil Service made any personal gain from the purchase of that property.

6. Spy Hill Gaol Site.

This property was purchased by the Government in December 1954 from George F. Stryker who accepted the Chestermere Lake gaol site as part payment.

Mr. Arthur Arnold, Deputy Minister of Public Works, filed a written memorandum as Exhibit 322 as follows:

" Re: Purchase of Spy Hill Property.

On December 9th, 1954, I was requested by my Minister, the Honourable A. J. Hooke, to proceed to Calgary to meet with Mr. R. M. Putnam, Deputy Minister of Agriculture, Mr. H. J. Wilson, Deputy Attorney General, the Honourable L. Maynard, Attorney General, and the Honourable Gordon Taylor, Minister of Highways, to inspect property located at Spy Hill, which I understand had been offered to the Government. The legal description of the Spy Hill property was:

all of Section 28-25-2-W.5
all of Section 33-25-2-W.5
all of Section 27-25-2-W.5
all of Section 26-25-2-W.5

" We journeyed to the site with Mr. H. N. Gilbert and his son, of Gilbert Brothers Real Estate Agents, who were agents for the property owned by Mr. Geo. F. Stryker.

We visited all four sections of this land and took considerable time looking over this property. This was rolling land, typical foothill country with considerable gravel deposits on the site. The existing water supply was from a deep well, which from reports, had never run dry. Even when this property was used as a dairy farm. This was, I am told, the well known Pallesen Dairy Farm.

After making our inspection we returned to our office in Calgary. I requested my representative in Calgary, Mr. J. A. Inglis, to give me a full report as to the condition of the buildings.

Copies of these reports are available at present should they be required for exhibits.

On December 16th, 1954, I was requested by Mr. Hooke to go with him to Calgary to discuss further the purchase of this property with Mr. and Mrs. Stryker, and Mr. Gilbert. We met the above named parties, in Mr. Gilbert's office on the same date.

" As I recall the best arrangement that could be made was that the Strykers would receive \$68.00 per acre and would accept on account of the purchase price the Chestermere Lake property at cost, plus a sum of approximately \$47,000.00 this being \$68.00 per acre for clear title. Mr. Hooke said he would discuss this with the Government.

Shortly after this I was informed by Mr. A. J. Hooke that we had purchased by exchange, and payment, the above mentioned property for the purpose of the future gaol site."

Mr. Arnold also filed Mr. Inglis' reports as Exhibit 323. Mr. Inglis was in charge of the Department office at Calgary (p. 4252). A special warrant was passed on the 10th day of February 1955 to provide the funds necessary to complete this purchase (Exhibit 327). Mr. Arnold stated that he had no knowledge of any money from this transaction passing into the hands of any Cabinet Minister or member of the Civil Service. He stated that the buildings on the Spy Hill site would be very useful when a gaol is operated there (p. 4262-4). He said the site is about two and one-half miles from the Banff Highway and that it will be necessary to black top the road from

the Highway to the site (p. 4267). The witness said he prefers the Chestermere Lake site to the Spy Hill property for use as a gaol (p. 4268). He stated that no real estate people other than H. N. Gilbert were approached for information about the value of the property (p. 4273).

Mr. Lucien Maynard, Q.C., former Attorney General, gave evidence on this subject, and he also gave evidence on the Chestermere Lake site. Elsewhere in this report a summary of his evidence about the Chestermere site will be found, and it should be noted that he there stated the Premier, through a press release dated January 27th, 1955, announced the change in the gaol site from Chestermere to Spy Hill. The change was made because of the public agitation in the Chestermere Lake area and because of the fact that the Chestermere Lake property was sold for what the Government paid for it. Mr. Maynard said he personally inspected the Spy Hill site and "it was acceptable to me personally and to the Department as a gaol site" (p. 3049). Mr. Maynard did not have anything to do with the negotiations leading to the purchase of this property, which were handled by the Department of Public Works (p. 3049).

He stated that, in his opinion, Spy Hill is not as good a gaol site as Chestermere (p. 3080).

Mr. Maynard said he did not receive any share of the purchase monies, and that he has no knowledge of any Cabinet Minister or any member of the Civil Service receiving any such money (p. 3049).

Mr. Harry J. Wilson, Q.C., Deputy Attorney General, also examined the Spy Hill site (p. 2988). The following questions by Commission Counsel and answers by Mr. Wilson appear at p. 2988:

- "Q And what did you find with respect to Spy Hill, is it suitable in your opinion as a jail site?
- "A Yes, I came to the conclusion it was. I didn't think it was as suitable as Chestermere but it was accessible to Calgary. The disadvantages as I saw it was, it was not on a highway. I think a highway would have to be constructed in that property for a distance of about three miles and the other thing was there was a lot of gullies on the property. The only advantage that I saw in the Spy Hill property over Chestermere was that it was a large, much larger area, some 2,000 acres I believe.
- "Q That would give you a better chance to expand facilities?
- "A Yes, whereas, the Chestermere area was only 891 acres.
- "Q And there again, did you have anything to do with the negotiations on the Spy Hill property?
- "A No.

"Q In other words, you merely made your inspection and gave your opinion from a professional point of view?

"A That is right."

Mr. Carman Ellis, who gave evidence regarding the Chestermere Lake site also gave evidence on this subject. He owns about 1,000 acres of ranch land adjoining the Spy Hill property (p. 4038). He said Stryker bought the place in 1951 for \$102,400.00 (p. 4046). He testified that Stryker told him on several occasions that he was prepared to sell the Spy Hill property for \$50.00 per acre (p. 4047).

George Stryker, a farmer in the Calgary district, gave evidence at pages 4091-4142. He said he purchased the Spy Hill property from the Pallesen Estate in 1950 for the sum of \$102,000.00 (pp. 4092 & 4115) and at the time he traded the property to the Government for the Chestermere Lake property he still owed the Pallesen Estate about \$34,000.00 (p. 4092). He gave listings of the Spy Hill property to several agents in 1954 including Gilbert (p. 4093), and Swanson and McCool (p. 4093). The listing to Gilbert was oral (p. 4093). The listing to Swanson and McCool was in writing and was filed as Exhibit 299. The listing to Gilbert was for a sale price of \$175,000.00

(p. 4095) and that figure included approximately \$34,000.00 owing to the Pallesen estate (p. 4096). The negotiations with the Government were started by Mr. Gilbert's letter to the Government dated November 23rd, 1954, Exhibit 308 (p. 4096). Stryker said that the idea of a trade was his own, resulting from reading in the newspapers about the Chestermere site (p. 4102). He stated several Government officials came to his place in December 1954 to inspect it (p. 4103). He identified the transfers of land, Exhibits 300, 301, 302 and 303 by which he transferred the land to the Government for a total consideration of \$175,000.00 (p. 4098). Stryker wrote a letter to the Premier dated February 25th, 1955, entered as Exhibit 306, and reading as follows:

"
Honourable E. C. Manning,
Tax Payers of Alberta.

Dear Mr. Manning:

This letter is being written by Mr. George Stryker, former owner of the Spy Hill Ranch and hope that it will be of some service to you in clearing up the difficulties that have arisen from the Liberals and Conservatives and Real Estate firms in Calgary and which is sour grapes on their part.

" Now Mr. Manning here has been my position in the past I have never offered this land for less than \$135,000 and purchaser to assume the mortgage of between \$39,000 and \$40,000 payable to the Pallesen Estate. Gilbert Bros. have had no other price than the \$175,000.

Hoping that this letter will be of some service to you and the Cabinet Ministers.

Yours truly,

George Stryker

"

The listing given to Swanson and McCool (Exhibit 299) was for \$135,000.00 but Stryker said that the purchaser would have to assume the "mortgage" to the Pallesen Estate of approximately \$34,000.00 (p. 4095). (Swanson flatly denied this in his evidence and said that \$135,000.00 was the full price). Stryker admitted to Mr. Milvain that he gave a written listing to T. A. Foley (Exhibit 309 dated May 8th, 1954) at \$60.00 per acre (p. 4133) which was the total price. He also gave a listing (Exhibit 310) to Harry Hudson, dated August 25th, 1954, at \$135,000.00. He gave a listing to A. L. Donovan (Exhibit 311) dated October 25th, 1954, at \$190,000.00 including cattle and machinery. He gave an oral listing to John A. Morrison, who then prepared a card containing details (Exhibit 312) at \$135,000.00. The card is dated November 12th, 1954. Mr. Helman then referred the witness to his letter to Premier Manning dated February 25th, 1955 (Exhibit 306) and Stryker said that in

the case of all the above mentioned listings the purchaser would assume the Pallesen "mortgage" over and above the listed price (pp. 4141-2).

Mr. Stryker seemed to be very confused about the listings and we find, as a fact, that in the case of all the listings referred to (other than the listing to Gilbert) the listed prices of sale were gross prices out of which Stryker, and not the purchaser, would pay the Pallesen indebtedness.

Hubert N. Gilbert, a real estate agent of Calgary, gave evidence at pages 4143-4162. The witness has had forty-four years' experience in the real estate business (p. 4143). He had an oral listing of the Spy Hill property from Stryker to sell at \$175,000.00 (p. 4143). The witness identified the letter dated November 23rd, 1954, which he wrote to Premier Manning (Exhibit 308). He said he then phoned the Premier and suggested he come to Calgary and have a look at the Spy Hill property (p. 4145). He stated the Premier said he would send some men down and as a result Gilbert subsequently met Honourable Gordon Taylor, Honourable Lucien Maynard, Q.C., Mr. H. J. Wilson, Q.C., and Mr. Arthur Arnold, and they all inspected the place (p. 4146). Gilbert wrote a letter to Premier Manning and

Honourable Lucien Maynard, Q.C., dated December 9th, 1954, (Exhibit 313) stating in part that if the deal went through Stryker was prepared to stay on the Spy Hill place on a lease basis and look after the buildings "until the Government gets the proper buildings that you are going to erect, finished". The witness filed a letter (Exhibit 316) addressed to him by Honourable A. J. Hooke, Minister of Public Works, making an offer to purchase the Spy Hill property for the sum of \$175,000.00 on the understanding that Stryker would purchase the Chestermere Lake site from the Government for \$127,875.00 and outlining other details. Gilbert said the deal was made on that basis (p. 4153). The witness testified that none of the money involved in the transaction went to any Cabinet Minister or to any member of the Civil Service (p. 4157). Mr. Gilbert testified that, in his opinion, the Spy Hill property was well worth \$175,000.00 (p. 4161).

Paul H. Swanson, a real estate agent from Calgary, gave evidence at pages 4162-4183. The witness said that the price of \$135,000.00 mentioned in the listing (Exhibit 299) was not a price to which the Pallesen "mortgage" of approximately \$34,000.00 would be added (p. 4164). The value of the Spy Hill place, in his opinion, was \$40.00 per acre (p. 4166). He admitted that he advertised the Khyn farm of 320 acres (which adjoins the Spy Hill property) for sale at \$63.00 per acre (p. 4173).

Robert M. Putnam, Deputy Minister of Agriculture, gave evidence at pages 4224-4230. He also examined the Spy Hill site on December 9th, 1954, in company with other Government officials (p. 4226). He told Mr. Maynard it was a livestock farm, not a grain farm (p. 4226), and that it was a fairly good livestock farm (p. 4227). The witness said he is not an appraiser and not qualified to value the land (p. 4228).

We have summarized the facts as presented to us concerning the purchase of the Spy Hill gaol site. There was no evidence that any Cabinet Minister or any member of the Civil Service made any personal gain from the purchase of the Spy Hill property nor from the sale of the Chestermere Lake property.

Exchange of Mineral Rights (e).

Paragraph (e) of the terms of reference reads as follows:

"to investigate and report upon the facts concerning the method of exchanging mineral rights owned by the Crown for mineral rights owned by others as authorized under the provisions of section 19, paragraph (a) of The Mines and Minerals Act, being chapter 66 of the Statutes of Alberta, 1949; and in particular to investigate and report upon the facts concerning the exchange of certain mineral rights between the Honourable E. C. Manning and the Crown in the right of the Province of Alberta as evidenced by Order in Council numbered O.C. 1707/51, dated November 28th, 1951, and published in the Alberta Gazette on the 15th day of December, 1951;"

The Commission heard evidence on this subject on April 12th, 1956. Argument was heard from Counsel on April 20th, 1956.

Only one witness gave evidence, namely, Mr. H. H. Somerville, Deputy Minister of Mines and Minerals, Province of Alberta.

A number of exhibits were filed, the numbers and a brief description of these being:

<u>Exhibit No.</u>	<u>Brief Description</u>
337	Memorandum prepared by Mr. Somerville, entitled "Review of Exchanges of Minerals".
338	Certified copies of 37 Orders in Council re mineral exchanges.
339	Statement showing details of all mineral exchanges made under the provisions of The Mines and Minerals Act.
340	A book of sketches, illustrating all mineral exchanges.
341	Memorandum prepared by Mr. Somerville entitled "Exchange of minerals between The Honourable E. C. Manning and The Crown".
342	Photostat copy of a portion of the Alberta Gazette of December 15th, 1951, showing publication of Order in Council 1707/51.
343	Photostat copy of a portion of the Alberta Gazette of January 15th, 1952, showing publication of Order in Council 1707/51.

Mr. Somerville's evidence appears in pages 4385 to 4443 of the transcript of evidence. He filed and read Exhibit 337 being a memorandum setting out the "method of exchanging mineral rights owned by the Crown for mineral rights owned by others as authorized under the provisions of Section 19, paragraph (a) of The Mines and Minerals Act". We quote that exhibit in full.

"

September 2, 1955.

REVIEW OF EXCHANGES OF MINERALS

At the transfer of the natural resources from the Federal Government to the Province on October 1, 1930, the Dominion Lands Act provided as follows:

74. The Governor in Council may

- (f) authorize an exchange of lands with any province, corporation or person, provided the reason for such exchange shall be set forth in the order;

This statute applied in Alberta after the transfer until the enactment on March 28, 1931, of The Provincial Lands Act and section 72, subsection (1), paragraph (a) of The Provincial Lands Act read:

72.-(1) The Lieutenant Governor in Council may -

- (a) exchange any Provincial lands for other lands in the Province, with any person or corporation:
Provided the reason for such exchange shall be set forth in the Order;

This provision continued without change in The Provincial Lands Act, The Provincial Lands Act, 1939 and The Provincial Lands Act, R.S.A., 1942, with the exception that the number of the section was changed to 75 in 1939 and then to section 78 in the Revised Statutes of Alberta, 1942.

" The Mines and Minerals Act came into force on April 1, 1949 and included the following provision:

19. The Lieutenant Governor in Council from time to time may,-

- (a) exchange any minerals for other minerals in the Province with any person or corporation, if the reason for the exchange is set forth in the Order;

This provision has continued in the Act without change.

Little is known of the exchanges made by the Department of the Interior while it administered the natural resources in Alberta until October 1, 1930, because the files pertaining to patented lands were not transferred to the Province.

The provision in The Provincial Lands Acts was applied in assisting farmers, ranchers and others in consolidating their holdings. Privately owned land located some distance from the farm or ranch headquarters would be exchanged with the Province for Provincial lands in nearer proximity. Some exchanges were made with the Hudson's Bay Company and other corporations.

As a general rule the exchanges pertained to surface of the lands but with the discovery of oil in the Leduc field and the resultant exploration

"and development for petroleum and natural gas the provision was applied to exchanges of a mineral or minerals in lands.

Spacing units permitting the drilling or producing of one well for oil on a legal subdivision in all surveyed lands in the Province, were first prescribed on the 2nd day of February, 1943, in regulations made by Order in Council numbered O.C. 148/43 pursuant to The Oil and Gas Wells Act. The regulations included a provision that The Petroleum and Natural Gas Conservation Board could vary well spacing in any particular area or field but the spacing for wells in the Leduc Field was not varied.

The first instance where completion of spacing units was the basic consideration occurred in section 35, township 50, range 26, west of the 4th meridian, a freehold owner holding the mines and minerals in parts of the section not covered by the North Saskatchewan River and the Crown, in the right of the Province, being the owner of the mines and minerals underlying the river. By Order in Council dated November 27, 1947 and numbered O.C. 1255/47 the Lieutenant Governor in Council authorized the Minister of Lands and Mines to exchange

"mines and minerals in certain lands in section 35 for mines and minerals in other lands in the same section with the freehold owner and upon conclusion of the exchange the Crown became the owner of all mines and minerals in two full legal subdivisions and the freehold owner became the owner of all mines and minerals in four full legal subdivisions. The reason set forth in the Order in Council authorizing the exchange was to bring about the orderly development of the petroleum and natural gas rights held by the Crown and the freehold owner.

The next exchange of minerals pertained to the north half of section 19, township 52, range 26, west of the 4th meridian. The Crown, in the right of the Province, was the owner of all mines and minerals underlying a lake unnamed on the plan of survey and the petroleum and natural gas in the balance of the half section were held under freehold title. By Order in Council dated July 8, 1948 and numbered O.C.776/48 the Lieutenant Governor in Council authorized the Minister of Lands and Mines to exchange petroleum and natural gas with the freehold owner and upon conclusion of the exchange the Crown became the owner of all petroleum and natural gas in three full legal subdivisions

"and the freehold owner became the owner of all petroleum and natural gas in three full legal subdivisions. The reason set forth in the Order in Council authorizing the exchange was to bring about the orderly development of the petroleum and natural gas rights held by the Crown and the freehold owner.

The third and last exchange of minerals pursuant to The Provincial Lands Act was authorized by Order in Council dated March 24, 1949 and numbered O.C. 307/49. Petroleum and natural gas in that portion of the east half of section 35 lying to the south and east of the North Saskatchewan River in township 50, range 26, west of the 4th meridian were held under freehold titles and the Crown, in the right of the Province, was the owner of petroleum and natural gas in certain areas underlying the river. The reason for the exchange was to bring about the orderly development of the petroleum and natural gas rights held by the Crown and by the freehold owners and upon conclusion of the exchange the Crown became the holder of all petroleum and natural gas in two full legal subdivisions and the freehold owners became the holders of all petroleum and natural gas in one full legal subdivision.

" There were no other exchanges to bring about the orderly development of Crown and freehold minerals until after April 1, 1949, when all minerals owned by the Province became subject to The Mines and Minerals Act.

By that date oil had also been discovered in the Redwater and Woodbend areas and the general spacing unit requirement of one well to a legal subdivision continued.

Acknowledging that titles to freehold minerals had been in effect for many years before the application of spacing requirements for oil wells and that some of the titles comprised fractional portions of spacing units because of the use of the shore of a river or lake or other irregular line as one of the boundaries, it was decided that in any case where a freehold owner held fractional spacing units under title and approached the Department regarding consolidation of his mineral holdings that the Department would consider an application for an exchange.

If acreage of the Crown were available for exchange to complete spacing units and the acreages involved were approximately the same an exchange was recommended for the approval of the Lieutenant

"Governor in Council whereby the freehold owner would consolidate his acreage into full spacing units and the Crown might or might not become entitled to full spacing units.

Subsequent to April 1, 1949 the Lieutenant Governor in Council has by Orders in Council authorized the Minister of Mines and Minerals to make thirty-seven exchanges of minerals.

The minerals involved in each exchange have been one of the following:

- (1) All mines and minerals;
- (2) All mines and minerals other than coal;
- (3) All mines and minerals other than coal and petroleum;
- (4) Petroleum and natural gas;
- (5) Natural gas.

The reason for thirty-five of the exchanges was to bring about the orderly development of the minerals.

In one instance it was found that the Department of the Interior had patented all mines and minerals in a parcel of land to the Hudson's Bay Company and then a few years later had patented all mines and minerals in the same parcel to the Canadian Pacific Railway Company. These two patents were issued by the Department of the Interior prior to

"the transfer of the natural resources to the Province. Recognizing that the Department of Mines and Minerals was successor to the mineral administration of the Department of the Interior, it was ordered by the Lieutenant Governor in Council that all mines and minerals in other lands be exchanged for the title held by the Hudson's Bay Company. The reason for the exchange was to eliminate the conflict in titles.

In the other instance it was represented to the Department of Mines and Minerals by a freehold owner,

- (1) that he held the mines and minerals under title in part of the west half of section 24, township 24, range 2, west of the 5th meridian,
- (2) that in his title the tract of land was described as lying to the south of the Bow River as shown upon a plan of survey of the township approved and confirmed at Ottawa on the 19th day of October, 1891 by E. Deville, Surveyor General, and
- (3) that the Bow River was shown in error on the plan of survey but was correctly shown on a plan of survey of the township approved

" and confirmed at Ottawa on the 31st day of May, 1912, by E. Deville, Surveyor General.

Upon the matter being investigated it was found that the 1912 survey correctly indicated the boundary of the river and it was ordered by the Lieutenant Governor in Council that upon the freehold owner transferring his mineral title to the Crown, the Minister of Mines and Minerals was authorized to grant and convey by notification all mines and minerals lying to the south of the Bow River as shown upon the plan of survey of May 31, 1912. The reason for the exchange was to vest in the Crown and in the freehold owner the minerals that each would own if the earlier survey had not been in error.

All of the Orders in Council authorizing mineral exchanges contained a provision that the exchange be free and without cost to the freehold owner or to the Crown for any sum or sums for assurance fund fees, unearned increment tax, registration of transfer or issue of certificate of title in respect of the notification by the Crown.

Each Order in Council was published in The Alberta Gazette under section 20 of The Mines and

"Minerals Act which reads as follows:

'20. Regulations and orders made by the Lieutenant Governor in Council pursuant to this Act shall be published in The Alberta Gazette and thereupon shall have the same force and effect as if they had been enacted by this Act.'

and was laid before the Legislative Assembly as required by section 14, clause (b) reading:

'14. The Minister shall annually lay before the Legislative Assembly within fifteen days after the opening of the first session in each year,

(b) a copy of every regulation and order made by the Lieutenant Governor in Council under the authority of this Act.'"

We accept the above statement by Mr. Somerville as an accurate outline of "the method of exchanging mineral rights owned by the Crown for mineral rights owned by others", and we so report.

We are also asked to investigate and report upon the facts concerning the exchange of mineral rights between The Honourable E. C. Manning and the Crown in the right of the Province of Alberta as evidenced by Order in Council numbered O.C. 1707/51, dated November 28th, 1951, and published in the Alberta Gazette on the 15th day of December, 1951. On this phase Mr. Somerville filed and read Exhibit 341, which we quote in full:

"

EXCHANGE OF MINERALS
BETWEEN THE HONOURABLE E. C. MANNING
AND THE CROWN

During the month of July or early in the month of August, 1951, Mr. William E. Simpson, Q.C., called at the office of the Director of Mineral Rights, which appointment was held by myself at that time. Mr. Simpson stated that he would like the Department to investigate the title pertaining to that portion of section 27, lying to the north and west of the North Saskatchewan River in township 53, range 23, west of the 4th meridian to determine whether an exchange could be arranged which would fill out some of the legal subdivisions.

Following our usual procedure of investigating the title in the Land Titles Office, Edmonton, Alberta, and the records in the Department of Lands and Forests, I was informed that the patent described the lands as comprising 354.3 acres while Mineral Title 234-S-130 recorded in the name of Ernest C. Manning, described the parcel as containing 306 acres. I advised Mr. Simpson by telephone of this. Later investigation in the Land Titles Office disclosed that Title 234-S-130 was corrected on August 8, 1951 by J. M. Thom to read "Plan of survey 22/6/1883 354.3 acres".

" When I became aware of the correction of the Title consideration was then given as to the manner in which an exchange might be made. A suggested exchange was discussed with Honourable N. E. Tanner, Minister of Mines and Minerals, and a short time thereafter he mentioned to me that Mr. Manning was not conversant with all of the details pertaining to exchanges and the Minister directed me to call at the office of Mr. Manning to explain how an exchange could be arranged.

Some time after I explained the matter to Mr. Manning, Mr. Tanner verbally instructed that a recommendation for his signature be prepared to the Lieutenant Governor in Council to authorize the suggested exchange.

The recommendation to Council was prepared on October 31, 1951, was signed by the Minister and passed to the office of the Executive Council. Order in Council dated November 28, 1951 and numbered O.C. 1707/51 was passed authorizing the Minister of Mines and Minerals to complete the exchange and the reason given in the Order in Council for the exchange was to bring about the orderly development of the minerals held by the Crown and Mr. Manning.

" Upon Ernest C. Manning transferring all minerals, of which he was the owner, in legal subdivisions 3 and 9 to the Province, notification No. 31 dated December 12, 1951 was issued directing the Registrar, Land Titles Office, Edmonton, to issue a title for all minerals to Ernest C. Manning in those portions of legal subdivisions 5, 6 and 10 covered by the waters of the North Saskatchewan River as shown upon a map or plan of survey of the township approved and confirmed at Ottawa on June 22, 1883 by A. Russell for the Surveyor General.

Four sketches have been prepared and are attached as Schedules 'A', 'B', 'C' and 'D';

Schedule 'A' shows the acreages of parcels within section 27, township 53, range 23, west of the fourth meridian as they appear on the township plan approved and confirmed on June 22, 1883 by A. Russell for the Surveyor General and on the township plan approved and confirmed on December 18, 1895 by E. Deville, Surveyor-General;

Schedule 'B' shows the ownership of minerals in the said section 27 just prior to the exchange of minerals authorized by O.C.

1707/51;

" Schedule 'C' shows the parcels in which minerals were exchanged under O.C. 1707/51; and

Schedule 'D' shows the ownership of minerals after conclusion of the exchange authorized by O.C. 1707/51.

Subsequent to December 12, 1951 the Department of Mines and Minerals has been in a position to entertain an application for an exchange of minerals from Royal Trust Company or from David G. Markle.

If an application were made by the Royal Trust Company to conclude an exchange in order to consolidate its holdings into one full legal subdivision then upon conclusion of the exchange the Company would own all of legal subdivision 3 or legal subdivision 4 and the Crown would be the owner of the legal subdivision not selected by the Company.

Mr. Markle is the owner of 118.5 acres which includes all of legal subdivision 1 and parts of five other legal subdivisions as shown on Schedule 'D' being legal subdivisions 2, 7, 8, 9 and 16. If an application were made by Mr. Markle to conclude an exchange in order to consolidate his holdings his ownership in legal subdivision 1 would not be affected but the balance of his acreage, being

"78.5 acres could be consolidated as one of legal subdivisions 2 or 8 and the balance 38.5 acres in the other of these two legal subdivisions or in legal subdivision 9. This would mean that Mr. Markle would upon conclusion of the exchange continue to be the owner of legal subdivision 1 and become the owner of the minerals in a further full legal subdivision and in 38.5 acres of another legal subdivision. The Crown would then be the owner of one full legal subdivision, 1.5 acres remaining in the legal subdivision in which Mr. Markle would have the balance of 38.5 acres, and also become the owner of 2.3 acres in legal subdivision 7 and 0.5 acres in legal subdivision 16.

If the exchanges were completed for consolidation of the freehold minerals in section 27 then minerals would be owned by

Ernest C. Manning in eight full legal subdivisions, 18.3 acres in legal subdivision 7 and 15.3 acres in legal subdivision 16;

Royal Trust Company in one full legal subdivision;

David G. Markle in two full legal subdivisions and 38.5 acres in a legal subdivision;

" James J. Foy in 1.4 acres in legal subdivision 16;

The Crown in two full legal subdivisions, 21.7 acres in legal subdivision 7, 1.5 acres in a legal subdivision and 23.3 acres in legal subdivision 16.

This would mean an increase in full legal subdivisions for

	From	To
Ernest C. Manning	5	8
Royal Trust Company	Nil	1
David G. Markle	1	2
James J. Foy	Nil	Nil
Crown	Nil	2

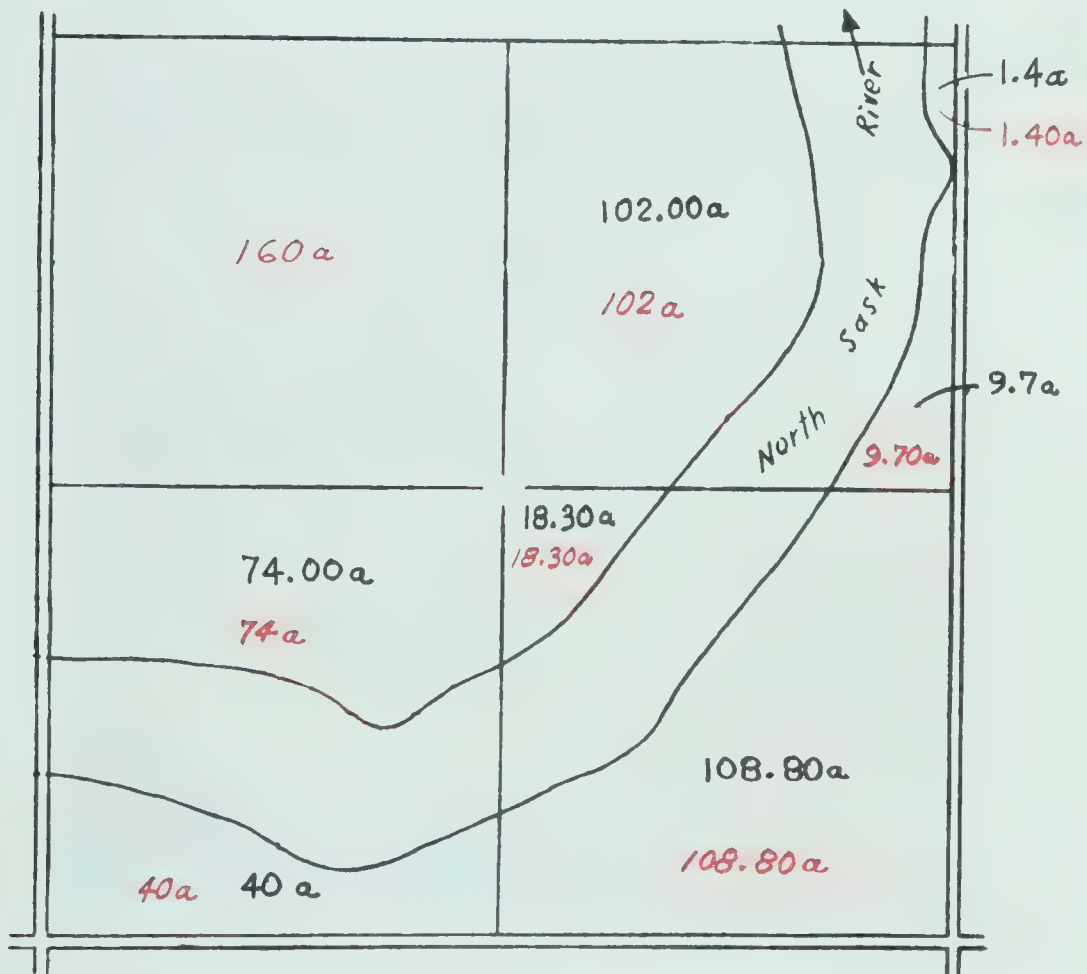
Order in Council numbered O.C. 1707/51, attached hereto as SCHEDULE 'E', authorizing the exchange with Ernest C. Manning was published in The Alberta Gazette of December 15, 1951. When the Order was checked to the Gazette in the Department of Mines and Minerals it was observed that the last paragraph of the Order appeared at the top of page 1796 of the Gazette instead of at the top of page 1798. A corrected notice was published in the Gazette on January 15, 1952. The Order was one of the Orders in Council laid before the Legislative Assembly by Honourable N. E. Tanner on March 5, 1952, incorporated in Sessional Paper No. 46.

SKETCH SHOWING ACREAGES APPEARING
ON PLANS APPROVED IN 1883 AND 1895

SKETCH OF SECTION 27

TOWNSHIP No. 53 RANGE 23 WEST OF 4 MERIDIAN

SCALE: 20 CHAINS TO AN INCH



Acreages in black taken from township plan approved and confirmed on June 22, 1883 by A. Russell for the Surveyor General.

Acreages in red taken from township plan approved and confirmed on December 18, 1895 by E. Deville, Surveyor General.

SKETCH SHOWING MINERAL OWNERSHIP
PRIOR TO
EXCHANGE AUTHORIZED BY O.C. 1707/51

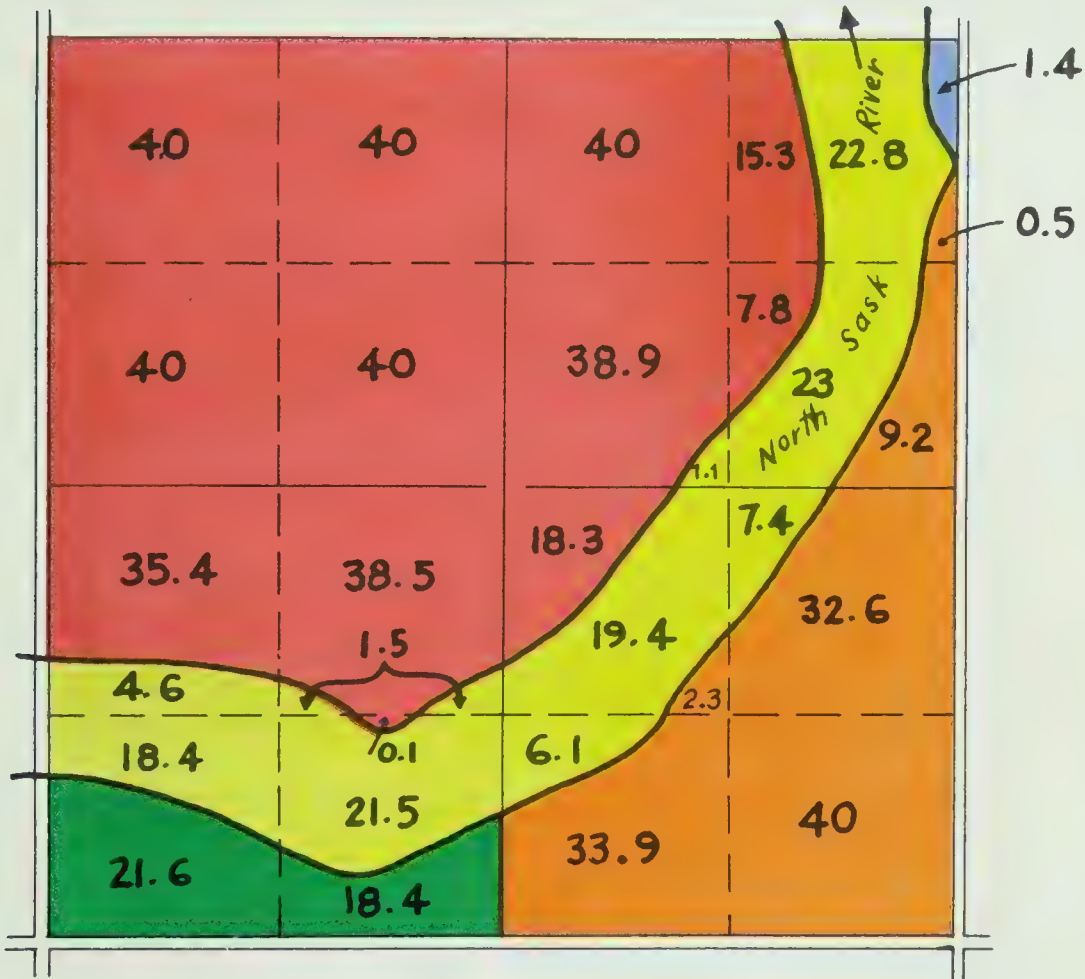
13	14	15	16
12	11	10	9
5	6	7	8
4	3	2	1

SKETCH OF SECTION 27

NUMBER OF LEGAL SUBDIVISIONS
IN A SECTION

TOWNSHIP No. 53 RANGE 23 WEST OF 4 MERIDIAN

SCALE: 20 CHAINS TO AN INCH



	<u>Title No.</u>	<u>Owner</u>	<u>Acres</u>
Red	234-S-130	Ernest C. Manning	354.3
Orange -	28-A-44	David G. Markle	118.5
Green -	126-H-130	Royal Trust Company	40.0
Blue -	707-C	James J. Foy	1.4
Yellow -		Crown	125.8
			<hr/> 640 <hr/>

SCHEDULE "C"

SKETCH SHOWING AREAS IN WHICH MINERALS WERE EXCHANGED UNDER O.C. 1707/51

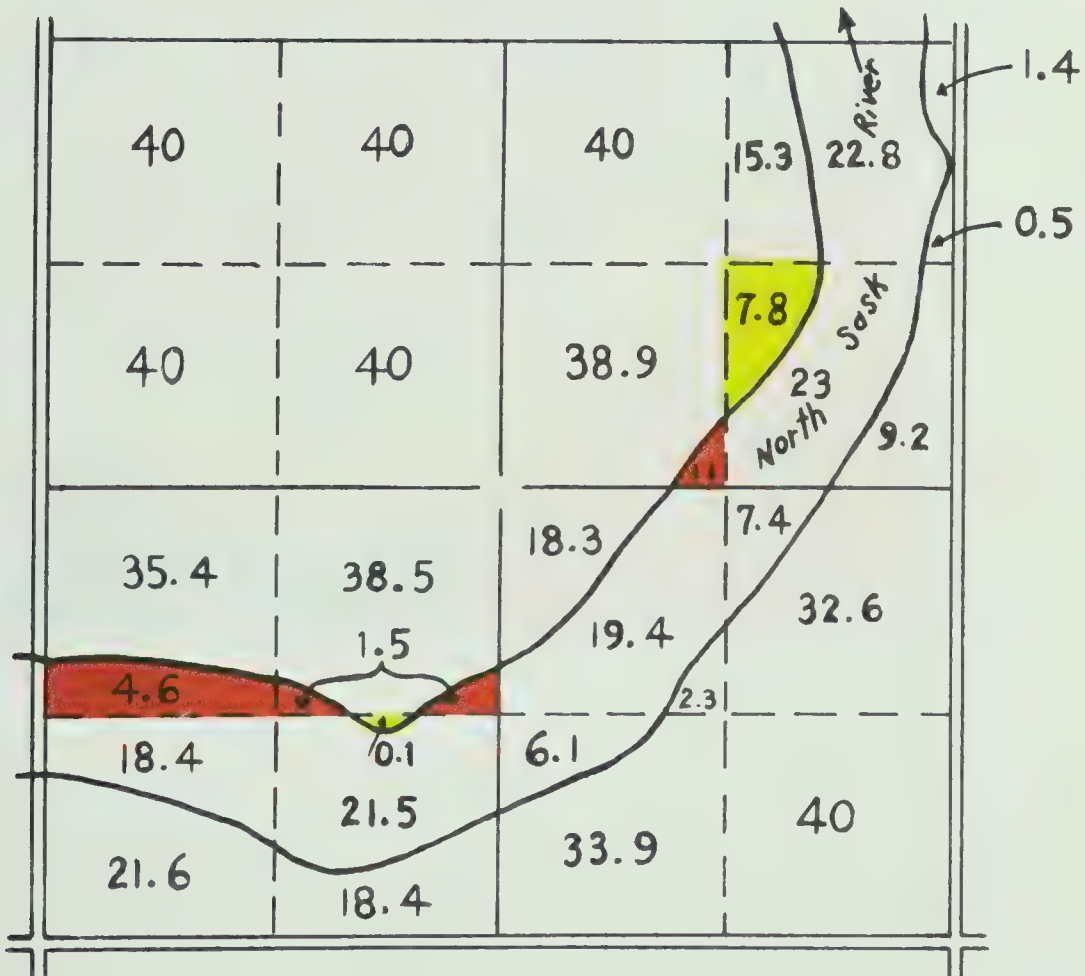
13	14	15	16
12	11	10	9
5	6	7	8
4	3	2	1

SKETCH OF SECTION 27

NUMBER OF LEGAL SUBDIVISIONS IN A SECTION

TOWNSHIP No. 53 RANGE 23 WEST OF 4 MERIDIAN

SCALE: 20 CHAINS TO AN INCH



Yellow - Transferred from Ernest C. Manning to Crown - 7.9 acres

Red - Transferred from Crown to Ernest C. Manning - 7.2 acres



SKETCH SHOWING MINERAL OWNERSHIP
AFTER
EXCHANGE AUTHORIZED BY O.C. 1707/51

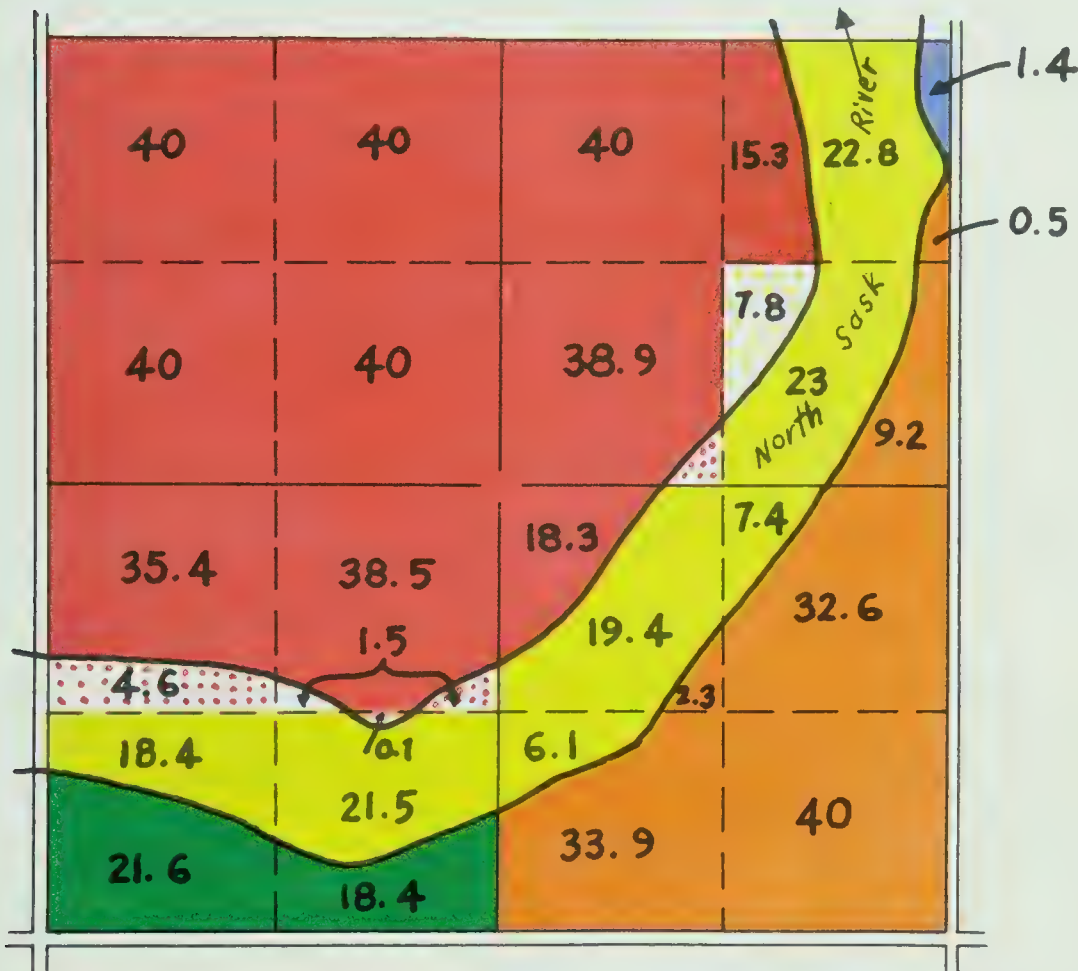
13	14	15	16
12	11	10	9
5	6	7	8
4	3	2	1

SKETCH OF SECTION 27

NUMBER OF LEGAL SUBDIVISIONS
IN A SECTION

TOWNSHIP No. 53 RANGE 23 WEST OF 4 MERIDIAN

SCALE: 20 CHAINS TO AN INCH



	<u>Title No.</u>	<u>Owner</u>	<u>Acres</u>	<u>Total</u>
Red	- 234-S-130	Ernest C. Manning	346.4	} 353.6
Red Dots	- 225-I-137	Ernest C. Manning	7.2	
Orange	- 28-A-44	David G. Markle	118.5	118.5
Green	- 126-H-130	Royal Trust Company	40.0	40.0
Blue	- 707-C	James J. Foy	1.4	1.4
Yellow	-	Crown	118.6	} 126.5
Yellow Dots	- 106-W-138	Crown	7.9	
				<u>640.0 acres.</u>

"

SCHEDULE 'E'

O.C. 1707/51

Approved and Ordered,

(signed) JOHN J. BOWLEN

LIEUTENANT GOVERNOR

Edmonton, Wednesday, November 28th, 1951.

The Executive Council has had under consideration the report of the Honourable the Minister of Mines and Minerals, dated October 31st, 1951, stating that:

WHEREAS it is enacted by section 19, clause (a) of THE MINES AND MINERALS ACT, being Chapter 66 of the Statutes of Alberta, 1949, that the Lieutenant Governor in Council from time to time may exchange any minerals for other minerals in the Province, with any person or corporation, if the reason for the exchange is set forth in the order; and

WHEREAS ERNEST C. MANNING is registered owner of all minerals, except gold and silver, within, upon or under all those portions of Legal Subdivisions Three (3) and Nine (9) of Section Twenty-seven (27), Township Fifty-three (53), Range Twenty-three (23), West of the Fourth (4) Meridian, in the Province of Alberta, lying North and West of the left bank of the North Saskatchewan River, as shown

"upon a map or plan of survey of the said Township, approved and confirmed at Ottawa on June 22nd, 1883, by A. Russell, for the Surveyor General of Dominion Lands, and on file in the Department of Lands and Forests at Edmonton; and

WHEREAS His Majesty the King in the right of the Province of Alberta (hereinafter referred to as the Crown) is owner of all minerals except gold and silver, within, upon or under all those portions of Legal Subdivisions Five (5), Six (6), and Ten (10), of Section Twenty-seven (27), in Township Fifty-three (53), Range Twenty-three (23), West of the Fourth (4) Meridian, covered by the waters of the North Saskatchewan River as shown upon a map or plan of survey of the said Township, approved and confirmed at Ottawa, on June 22nd, 1883 by A. Russell for the Surveyor General and on file in the Department of Lands and Forests at Edmonton; and

WHEREAS Ernest C. Manning has applied for an exchange of minerals with the Crown, which such exchange would bring about the orderly development of such minerals held by the Crown and by the said Ernest C. Manning; and

WHEREAS it is proper and convenient that such exchange be made, subject to the terms and conditions hereinafter set out;

" THEREFORE, upon the recommendation of the Honourable the Minister of Mines and Minerals, the Executive Council advises that, pursuant to the provisions of The Mines and Minerals Act, upon the said Ernest C. Manning transferring to the Crown all his right, title and interest free and clear of all encumbrances in and to all minerals other than gold and silver, within, upon or under all those portions of Legal Subdivisions Three (3) and Nine (9) of Section Twenty-seven (27), Township Fifty-three (53), Range Twenty-three (23), West of the Fourth (4) Meridian, in the Province of Alberta, lying North and West of the left bank of the North Saskatchewan River as shown upon a map or plan of survey of the said Township, approved and confirmed at Ottawa, on June 22nd, 1883, by A. Russell, for the Surveyor General, and on file in the Department of Lands and Forests at Edmonton, of which minerals in the said lands the said Ernest C. Manning is the registered owner, the Minister of Mines and Minerals be and he is hereby authorized to grant and convey by notification to the said Ernest C. Manning all the Crown's right, title and interest in and to all minerals other than gold and silver within, upon or under all those portions of Legal Subdivi-

"sions Five (5), Six (6) and Ten (10) of Section Twenty-seven (27), in Township Fifty-three (53), Range Twenty-three (23), West of the Fourth (4) Meridian, covered by the waters of the North Saskatchewan River as shown upon a map or plan of survey of the said Township, approved and confirmed at Ottawa, on June 22nd, 1883, by A. Russell for the Surveyor General and on file in the Department of Lands and Forests at Edmonton, of which the Crown is the owner as before mentioned.

The Executive Council further advises, upon the recommendation of the Honourable the Minister of Mines and Minerals, that the said exchange be made free and without cost to the said Ernest C. Manning or to the Department of Mines and Minerals for any sum or sums for Assurance Fund Fees, Unearned Increment Tax, Registration of Transfer or issue of Certificate of Title in respect of the notification by the Crown.

(SIGNED) ERNEST C. MANNING

C H A I R M A N "

Under examination by Commission Counsel, Mr. Somerville said (p. 4420):

"Q In other words, do I understand that as far as the Department is concerned, the particular date that this exchange was requested, your acreage could have been as good or as bad as the other acreage?

"A That is right, yes.

"Q So far as your knowledge goes, was any preferential or special treatment given to Ernest C. Manning because of his position as Premier of the Province, in considering the merits of this application?

"A No, there was not.

"Q Was he given the same routine treatment as any other individual?

"A That is right."

Under examination by Mr. Ronald Martland, Q.C., Mr. Somerville said (pp. 4421-4424):

"Q And, according to my count on Exhibit 339, there had been 17 exchanges under the Mines and Minerals Act before the exchange which was made with Premier Manning?

"A Yes.

"Q We have a total of 20 which had been made prior to the exchange with Premier Manning, under the two Acts?

"A Yes.

"Q Would it be correct to say then that the principles governing such exchanges had been well established in the Department before Premier Manning's exchange was made?

"A Yes, they had.

"Q By the way, how long have you been with the Department of Mines and Minerals and its predecessor, Mr. Somerville, the Department of Lands and Mines?

"A I was transferred to the Department of Lands and Mines from the Department of Municipal Affairs on the 6th of February in 1931, and then I carried on with the Department of Lands and Mines until the end of March in 1949, and since that time I have been with the Department of Mines and Minerals.

"Q You have had a long experience with the Department?

"A Yes, I have been there for a while.

"Q And with its policies, is that right?

"A Yes.

"Q Was there any difference in principle or policy in relation to the exchange made by the Government with Premier Manning in relation to the other exchanges which you have listed in Exhibit 339?

"A No, there is no variation.

"Q Is it customary in each Order in Council relating to such exchanges, to provide that the exchange be free and without cost to the Crown and the freeholder in relation to assurance fund fees, unearned increment tax and registration charges?

"A That is right, that provision is in each Order in Council.

"Q So that the appearance of that provision in the Order in Council relating to the exchange with Premier Manning was nothing unusual?

"A No, it wasn't unusual.

"Q He wasn't being given any special favour by including that provision in the Order in Council?

"A No, he wasn't.

"Q And you have told us that the Order in Council in fact was published twice in the Alberta Gazette?

"A That is right.

"Q By reason of the error which had occurred in the paging in the earlier Gazette?

"A Yes.

"Q But, as it turned out, the Order in Council relating to his exchange appeared twice, whereas normally they would appear once?

"A That's right.

"Q And the Order was laid before the Legislative Assembly at the 1952 Session?

"A Yes.

"Q So that it was there to be looked at by any members of the Legislature at the 1952 Session?

"A That is right.

"Q And the actual acreage exchanged resulted in the Crown getting 7.9 acres after the exchange, whereas Premier Manning got 7.2?

"A Yes.

"Q So far as anybody knows today, the value per acre is exactly the same in relation to all of those acres?

"A I would agree with that statement.

"Q In some instances the freeholder gets slightly more acreage than the Crown on the exchange, just depending on the circumstances, Mr. Somerville?

"A That is right.

"Q And some of the exchanges involve pretty substantial acreages?

"A Yes, they have, with the Canadian Pacific Railway and some others.

"Q According to my computation, the one with Premier Manning is among the 9 smallest exchanges of these 37 that you have listed?

"A Yes.

"Q There was nothing special, you have told Mr. Morrow, about that particular exchange with Premier Manning?

"A No.

"Q Would the same deal have been made with an oil company if it had held the freehold and had approached your Department with a request for an exchange?

"A We would have gone ahead on the same basis.

"Q It would have been possible, had Mr. Manning wished to do it, to transfer acreage to an oil company freehold and have it apply rather than make the application personally?

"A That's right.

"Q And it would have been dealt with in the same way?

"A Yes."

During his cross-examination by Mr. Milvain, Q.C., Mr. Somerville said that during his interview with the

Premier there had been no discussion between them concerning the provisions of The Legislative Assembly Act and the Prohibition of Dealing in Crown Lands Act. The witness said that prior to this matter arising, the law officers of the Crown had given an opinion that the Prohibition of Dealing in Crown Lands Act does not apply to Ministers of the Crown. Under further cross-examination the witness said (p. 4433):

"Q During your discussions with the Premier did he evidence any concern at all as to the, entirely aside from these statutes, the ethical position of an officer of the Crown dealing with Crown lands?

"A No, his only concern was that he certainly didn't want to have anything better than prevailed to any other applicant, and he was impressed when I pointed out that the acreage he would get would be less than what he was giving."

and (p. 4435-6):

"Q And at the time you were talking to Mr. Manning he was then a Cabinet Minister and Premier of the Province?

"A Yes.

"Q Also a Member of the Legislature. I am wondering whether or not during the course of your discussion with him he raised any question or doubt as to the ethical position of a Cabinet Minister entering into any kind of a transaction whereby he acquired any interest in public property?

"A I can't recall anything.

"Q But that the ethical phase of the matter was given no consideration whatever in your discussion with him?

"A Well, excepting that he was very definite that the exchange would never go through if he were to end up with more acres than what he was giving.

"Q Yes, that was the only concern, that there should not be more acres go to him than he gave to the Crown?

"A Yes.

"Q No other ethical phase of the matter given any consideration?

"A I cannot recall anything else."

At the request of Mr. Milvain, Q.C., Mr. Martland, Q.C., gave the following information to the Commission:

- (a) That Premier Manning is still the owner of the mineral rights in question.
- (b) The Premier leased the said mineral rights (comprising 353.6 acres) to Western Leaseholds Limited for a period of ten years from January 9th, 1952.
- (c) The Premier received a cash bonus from Western Leaseholds Limited of \$14,000.00 which amount included a commuted value for acreage rental payments.
- (d) The lease contained no drilling commitment.

- (e) The lease contains the usual $12\frac{1}{2}\%$ royalty provision.

We accept Mr. Somerville's written memorandum supplemented by his oral testimony as above quoted, and the information given to us by Mr. Martland, Q.C., as an accurate statement of "the facts concerning the exchange of certain mineral rights between the Honourable E. C. Manning and the Crown in the right of the Province of Alberta", and we so report.

Treasury Branches (f).

Paragraph (f) of the terms of reference reads as follows:

"to investigate and report on the facts concerning the general procedure followed by the Treasury Branches with respect to making loans, and in particular the making of loans by the Treasury Branches to members of the Legislative Assembly, and whether any loss was sustained by the Treasury Branches by reason of such loans. Provided that in the public interest and to protect the interest of customers of the Treasury Branches, no investigation shall be made into loans made to or other dealings with the Treasury Branches by any other persons."

The Commission appointed pursuant to Order in Council 1115/55 under the Chairmanship of Mr. Justice H. J. Macdonald heard evidence on this subject on October 21st, 1955. By the terms of Order in Council 140/56, it is provided in part as follows:

" Further that the evidence already given before the Commission appointed pursuant to Order in Council 1115/55 with respect to paragraph (f) shall be deemed to be evidence given before this Commission."

This Commission heard additional evidence on this subject on February 27th, 28th and 29th, and on March 2nd,

3rd and 5th, 1956. Argument was heard from Counsel on March 12th, 1956.

Only one witness gave evidence, namely, Mr. A. K. Olive, Superintendent of Treasury Branches of the Province of Alberta. A number of exhibits were filed, the numbers and a brief description of these being:

<u>Exhibit No.</u>	<u>Brief Description</u>
120	Memorandum re general procedure followed by Treasury Branches in making loans.
121	Folder of forms used in connection with Treasury Branch loans.
122	Statement of loans made by Treasury Branches to members of the Legislative Assembly from January 1st 1948 to June 30th, 1955.
123	Statement of personal temporary overdrafts granted by Treasury Branches to members of the Legislative Assembly from January 1st, 1948 to June 30th, 1955.
124	Statement of temporary overdrafts granted for commercial business accounts by Treasury Branches where members of the Legislative Assembly owned such business from January 1st, 1948 to June 30th, 1955.
125	Summary of loans to members of the Legislative Assembly by Treasury Branches, January 1st, 1948 to July 31st, 1955.

<u>Exhibit No.</u>	<u>Brief Description</u>
128	Letter dated January 11th, 1956, addressed by Mr. Justice Macdonald to J. C. Mahaffy, Q.C., giving decision of Commission regarding loans to corporations.
129	Statement of loans made by the Treasury Branches to members of the Legislative Assembly from January 1st, 1941 to December 31st, 1947.
130	Statement of personal temporary overdrafts granted by Treasury Branches to members of the Legislative Assembly, January 1st, 1941 to December 31st, 1947.
131	Statement of temporary overdrafts granted for commercial business accounts by Treasury Branches where members of the Legislative Assembly were members of a partnership owning such business from January 1st, 1948 to June 30th, 1955.
132	Balance Sheet of Canada West Insurance Company as at December 31st, 1951.
133	Chattel Mortgage, Roy S. Lee to Treasury Branch dated November 17th, 1942 and registered November 30th, 1942.
134	Certified copy of chattel mortgage, Frank O'Sullivan to Provincial Treasurer dated February 7th, 1948, and registered February 21st, 1948.

Mr. Olive's evidence appears in pages 973 to 1449 of the transcript of evidence. He filed and read Exhibit 120, being a memorandum setting out the general

procedure followed by the Treasury Branches in making loans. The exhibit also contains a statement with respect to loans made to members of the Legislative Assembly. Since we are charged with the duty "to investigate and report on the facts concerning the general procedure followed by the Treasury Branches with respect to making loans", and since Mr. Olive's evidence was the only information available on that subject, we will now quote the first portion of that memorandum in full:

"General Loaning Procedure

The authority for the loaning of Treasury Branch funds is set out in the Treasury Branches Act, Chapter 29, Revised Statutes. Section 6 reads: 'The Provincial Treasurer, either himself or his duly authorized Agent, may loan any deposits received in the Branches of the Treasury, under the provisions of this Act to persons, firms or corporations, upon such terms as may be agreed upon and in connection with any such loan may take such negotiable instruments and securities as he may from time to time direct'. Specimens of security forms applicable to the various types of loans are available.

In relation to the foregoing authority, each Branch is supplied with Circular Instructions relating to the general policy in granting credit. Copy of this Circular is attached and referred to as Circular A 1-1, 'Advances - General Policy'. In all, there are 15 Circulars dealing with the various phases of loaning business. These Circulars are issued for the guidance of local Branch managers and set out in detail the general policy and procedure in the granting of credit. They are revised from time to time as occasion warrants.

" The method of operating Treasury Branches conforms in majority to the principles followed by chartered banks. A manager is appointed for each Branch in operation, and the onus of its proper functioning devolves largely upon him and his respective staff under the jurisdiction of Head Office.

Credit or loans authorized by local Branch Managers to individual customers is restricted as to amount according to a Discretionary Loaning Limit set up for each Manager. (See Circular A 1-1, page 2, Section G., appended hereto.) The limit so set for each Manager is established by the Treasury Branches Loans Committee, comprising a three man Board approved by the Executive Council. In arriving at a decision as to the sum to be allotted to each Manager, the Loans Committee take into consideration his capabilities and experience he has had along such lines. These limits vary in majority from \$300.00 in smaller Branches to \$2,000.00 in main City Branches.

Applications for loans in excess of the Manager's Discretionary Loaning Limit are briefed by the local Manager on a special 'Application for Credit' form detailing customer's requirement and giving full information as to purpose, terms of repayment, security held or offered, history of client (past and present), accompanied by a financial statement of his affairs (audited if available) showing net worth. Such applications are dealt with by senior Credit Officers in Head Office up to a figure of \$5,000.00 and approved only upon a decision reached by a double checking method by two such officers and/or the Superintendent.

All loan applications in excess of \$5,000.00 go before the Loans Committee aforementioned, and the decision of approval or rejection is decided by majority vote.

In conclusion, it might be remarked that each Branch is completely audited annually by a team of Inspectors on surprise visit. Reports are compiled by the Inspectors, setting out facts found in respect to all loans on the books, pointing out their present status and detailing the securities held and their values of protection. In addition, the

"Provincial Auditor, at least once each year, makes a complete audit of the books at Head Office, which include an examination of signed Branch returns, Inspectors' Reports and Branch loan files.

Loans to Members of the Legislative Assembly

The same procedure as stated above applies to all loans made to Members of the Legislature. There have been no losses incurred through the granting of loans to Members of the Legislature during the entire 14 years of Treasury Branch loaning operations. There are presently no loans outstanding to any Member of the Legislature and the Amendment to the Legislative Assembly Act, Chapter 4, 1955, prohibits any Member of the Legislature from further borrowings from Treasury Branches."

We also quote, in part, from the circular attached to the above mentioned memorandum as follows:

" Superintendent of Treasury Branches
Edmonton Alberta

January 2nd, 1948.

Circular A 1-1
Page 1

Advances - General Policy

A. Forms in Which Advances May be Made

Advances may be made,-

1. In the form of Loans, represented by Promissory Notes discounted for the promissor or maker.
2. In the form of Trade Bills, represented by Promissory Notes discounted for the payee or endorser, or by drafts discounted for the drawer.
3. In the form of Overdrafts under the circumstances outlined in Circular A 1-7.

"B. Capital Advances

Advances will not be made for capital expenditures or for the repayment of old debts unless the circumstances are exceptional. This class of advance must be restricted as much as possible. Speculative investment financing will not be entertained. Loans for capital investment in any form will not be considered where applications are made to provide 100% of investment.

C. Security and Source of Repayment

All advances INCLUDING OVERDRAFTS must be adequately secured and a definite source of repayment must be established.

D. Term of Advances

Advances shall only be made for short terms ranging up to twelve months unless the circumstances are exceptional. Long term mortgage loans will not be considered.

E. Purposes for Which Advances May Be Made

Advances shall be restricted to the following classification, and shall only be made to fully co-operating depositors unless the circumstances are exceptional:

1. Alberta Manufacturers, Wholesalers, Contractors, Industries, etc.-
already established and operating -
 - (a) For current operating expenses.
 - (b) For restricted capital assistance based on a reasonable percentage of the investment, for the creation of tangible assets, for a maximum period of two years.
2. Retail Merchants - already established and operating -
 - (a) For current operating expenses.
 - (b) For purchase of stock at discount.
 - (c) Temporary Overdraft accommodation.

- " 3. Cities, Towns, Villages, Municipal Districts, Municipal Hospital Districts, School Divisions and Districts - secured by assignment of taxes and grants
- (a) For current operating expenses.
 - (b) For limited capital purposes when warranted by circumstances.
4. Primary Producers
- (a) To assist the conditioning of live-stock for market.
 - (b) For current operating expenses, when repayment is guaranteed from sources other than crop proceeds.
 - (c) For limited implement and machinery financing, not exceeding 60%, where repayment is assured out of the current season's operations.
5. Personal - (that is, to wage-earners, office workers, professional people, etc.)
- (a) For any legitimate purpose including home improvements.
 - (b) When secured by reliable endorsement or salary assignment or other tangible collateral.
 - (c) When in the form of term loans,- for periods not exceeding three months, or when in the form of monthly instalment loans - for periods not exceeding twelve months."

"H. General

Before any Application for Credit is submitted, the circumstances of the applicant must be thoroughly investigated from every aspect and the Manager must be prepared to recommend it personally. Managers must not submit applications if they are the least bit doubtful as to the honesty, integrity or reliability of the applicant or of his ability to repay the advance at maturity. The utmost care must be exercised in making recommendations and in appraising securities. It

"must be borne in mind that the Loans Committee is entirely dependent upon the Manager's remarks and recommendations as the only means at its disposal in judging whether or not an application should be approved. For this reason the success or failure of the loaning policy depends to a great extent upon the reliability and judgment of the Branch Managers.

It is far better to refuse a doubtful advance at the risk of losing a client than to make the advance to retain the client for a time and to lose both the client and the amount of the advance ultimately."

To the above statements must be added information given by Mr. Olive in answer to questions put to him by Commission Counsel at pages 1250 to 1252 of the transcript as follows:

"Q Did this Committee that you describe, did it set up any rules or standards itself for passing upon these loans, this Committee that you are a member of?

"A What, in what particular are you referring to, Mr. Morrow?

"Q Well, as I understand it, you have very definitely laid down instructions and rules governing your branch managers in the different categories of managers?

"A That's right.

"Q And if it came outside of that field, it was to be referred to your Committee for consideration?

"A That's right.

"Q Did your Committee itself formulate any rules or standards that you would obey, or was it entirely up to your own discretion?

"A No, no, the Committee decided on all those matters, and what would happen was this, if a manager exceeded his authority in any particular account, we would call for an explanation, and when that explanation came in, it would be referred to the Committee and dealt with.

"Q Let's take a different type though, let's say, your manager, there is no disciplinary action contemplated at all, he hasn't exceeded a thing, he realizes that the loan that is applied for by an M.L.A. exceeds his authority, so he writes in to you with one of these application forms, for your approval or disapproval; now, in assessing that account, or, that application, did your Committee have any of its own rules to follow or did you just look at it as three or four individuals and pass upon it?

"A Well, what generally happens, loans up to \$5,000.00 are generally approved by myself.

"Q But, in arriving at whether you would approve or disapprove, what I am trying to clear up is, did you have any rules to follow, that is, did you as a Committee lay down, 'Now, this is how far we will go with this type of security or this type of a person or this type of a salary or income'?

"A No, the applications are submitted and each member of the Committee gets a copy and he scrutinizes those applications independent of the other members, and the Committee, or, the members of the Loan Committee when they meet, each man has his own valuations and decisions in connection with them, and they are discussed generally and either approved or disapproved.

"Q So that, is it correct to say that as a committee you had no definite policy?

"A No set rules laid down in writing.

"Q It was approached purely as individuals of the Committee, and then you would try to arrive at a consensus of the Committee?

"A That's right.

"Q And then the loan would be either approved or disapproved?

"A That's right."

As indicated by the above reference to Exhibit 121, Mr. Olive submitted to us copies of all forms of security in use by the Treasury Branches and Counsel for the Department advised us (p. 974) that the forms "pretty well follow in most instances standard forms that are in use by many of the banks here." That statement by Counsel has not been questioned by any other Counsel or witness and we are satisfied the forms are adequate for the purposes intended.

We are therefore able to report that the above sets forth the general procedure followed by the Treasury Branches with respect to making loans.

We are also asked to investigate and report on the facts concerning the making of loans to Members of the Legislative Assembly, and whether any loss was sustained by the Treasury Branches by reason of such loans.

Exhibits 122, 123, 124, 129, 130 and 131 set out in detail all loans made between January 1st, 1941 and June 30th, 1955 to any Member of the Legislative Assembly, or to any such Member carrying on business under a trade name, or to any business partnership in which such Member was a partner. The exhibits include overdrafts permitted to such Members.

Exhibit 125 is a summary of loans made to Members of the Legislative Assembly from January 1948 to July 1st, 1955. This exhibit shows that the largest number of Members who were indebted to the Treasury Branches at any one time was 23, which figure was reached in both February and March, 1953. The Members' largest total of indebtedness at any one month-end (including loans and overdrafts) was \$86,893.00 in November 1954, made up of 18 accounts. By February 1955, the month-end total outstanding had been reduced to \$58,670.00 involving 22 accounts.

By the end of June 1955 all loans and overdrafts of Members had been paid in full and after that date no Member was indebted to the Treasury Branches.

An amendment to The Legislative Assembly Act was passed at the special session of the Legislature held in

August 1955 which, in effect, prohibits any member of the Legislative Assembly from borrowing money from the Treasury Branches.

Mr. Olive in Exhibit 120 states that, "The same procedure as stated above applies to all loans made to Members of the Legislature". At pages 994 and 995 of the transcript will be found the following questions by Commission Counsel and answers by Mr. Olive:

"QFirst of all, in making loans to Members of the Legislature or in authorizing overdrafts by such members what has been the general procedure followed by the Treasury Branches in dealing with members of the Legislature?

"A The general procedure has been exactly the same as any other individual in as far as loans goes. The same particulars are taken, the purposes are investigated, the source of repayment is investigated and if the information gathered is favorable we make the loan -- if it is not, we do not.

"Q Again thinking of the terms of reference has any loss been suffered by the Treasury Branch or Treasury Branches in respect of any loans made to members of the Legislature?

"A Not a nickel.

"Q And when you say that you are referring right back to 1941?

"A 1941, that is correct.

"Q When you say that are you also including overdrafts?

"A Yes.

"Q And are you also including any advances to a member operating under a trade name?

"A Yes.

"Q And you say that in no case have you suffered a loss?

"A That is right."

We have carefully examined the various exhibits filed on this subject of our inquiry and we have also had the benefit of hearing a most extensive cross-examination of the witness Olive by Counsel for the Alberta Liberal Association with respect to some, but not all, of the loans made to Members of the Legislative Assembly. We have not been able to compare the method of making loans to such Members with the method of making loans to other persons because of the proviso appearing in paragraph (f) of the terms of reference which says:

"Provided that in the public interest and to protect the interest of customers of the Treasury Branches, no investigation shall be made into loans made to or other dealings with the Treasury Branches by any other persons."

However, we have no reason to doubt Mr. Olive's statement that the procedure outlined with respect to loans to ordinary customers applied to all loans made to Members of the Legislature.

In his argument to us, Counsel for the Alberta Liberal Association raised a number of objections to loans to Members which may be summarized as follows:

- (1) An ethical objection, namely that Members should not borrow from Treasury Branches because "they are in effect dealing with themselves as trustees of public funds," and "are acting with basic impropriety in dealing with themselves".
- (2) That loans were made to Members in contravention of the General Instructions set out in Exhibit 120.
- (3) That assuming the General Instructions contained in Exhibit 120 applied only to Branch Managers and not to the Committee on Loans, such Committee in approving of certain loans to Members did depart time after time from the injunctions it gave, on basic sound principles, to its own managers.

Dealing with Counsel's first argument, namely, "an ethical objection", we fully realize that this is a debatable point and there has been, over the centuries, a vast accumulation of unwritten law on the subject which has developed with our parliamentary processes and procedures. On this question the final arbiter is Parliament

itself, and Parliament, for our purposes, is the Legislative Assembly of the Province of Alberta. The Legislative Assembly by the legislation noted above has now decreed that none of its members shall make loans from the Treasury Branches and we have concluded that it is not for us to say whether such legislation is wise or unwise, justified or not justified.

We will refer now to the second argument advanced by Counsel, that loans were made to members in contravention of the General Instructions to Managers. Firstly, only one case was brought to our attention where a Branch Manager violated those instructions in making loans to a Member of the Legislative Assembly (p. 1388). Secondly, we are satisfied from the evidence of Mr. Olive that such instructions were published by the Loans Committee for the guidance of Branch Managers and employees and were not intended to be binding upon the Loans Committee itself. We have therefore concluded that when the Loans Committee approved of loans to Members which might seem to contravene the General Instructions to Managers, we must not assume that such loans should automatically be classed as improper or improvident.

Thirdly, Counsel says that if the General Instructions were sound for use by Managers, they must surely be sound guides for use by the Loans Committee. He then argued that various loans to Members approved by the Loans Committee were improper or improvident because he claimed that they were made in contravention of the instructions to Managers. As noted above, it is clear from Mr. Olive's evidence that there is no directive to members of the Loans Committee which is comparable to the written instructions to Managers. If it is the intention that the Loans Committee should have unrestricted discretion in the matter of approving or rejecting applications for loans which are beyond the scope of the Managers' authority, we do think that the circular above quoted and entitled "Advances - General Policy" should be amended to make it abundantly clear that the restrictions set out are applicable only to local Managers and do not necessarily apply to the Loans Committee.

Some loans were made to Members of the Legislative Assembly on the security of the borrower's promissory note plus an assignment of the Member's sessional indemnity to be earned by the Member several months later. In one case it was shown that at the time of the loan, the Member had very little in the way of realizable assets from which

recovery of an unpaid promissory note could be enforced. If, because of the death of the member, or his resignation from the Assembly, or the dissolution of the Assembly, or any other cause which would prevent him from earning the assigned indemnity, the security of the assignment would disappear and be valueless. We question the advisability of making that particular loan but, on the other hand, it should be observed that it was paid in full on its due date.

We have concluded that all loans made to Members of the Legislative Assembly were made in the usual course of the loaning procedures followed by the Loans Committee of the Treasury Branches. With the exception above mentioned, the loans were adequately secured. They all were paid in full. The same rate of interest was charged to Members as was charged to other customers. In fact, in all respects, we have no reason to believe that Members of the Legislative Assembly were treated in any way differently from other customers. We had no evidence before us which suggested that pressure was brought to bear on any Treasury Branch employee to influence him in favor of making loans to any Member of the Legislative Assembly.

We wish to express our thanks to all Counsel who appeared, for their assistance to us throughout the Public Hearings. Also, we wish to thank the many other individuals who rendered us invaluable assistance, not only while the Public Hearings were taking place, but also during the preparation of this report.

DATED at Edmonton this 1st day of June 1956.

Alberta. R. C. Appointed under the
Public Inquiries Act [to investi-
gate the conduct of the business of
government]
Report

GOV.DOC

CA2ALZ 1 - 56P01

JL

330.0

c.3

AL14

c.3

Alberta

PROVINCIAL LIBRARY
Edmonton

